

2 2ESSB 6151 - S AMD 460

3 By Senators Long, Costa, Snyder and Carlson

4

5 Strike everything after the enacting clause and insert the  
6 following:

7

"PART I

8

GENERAL PROVISIONS

9 NEW SECTION. **Sec. 101.** The legislature intends the following  
10 omnibus bill to address the management of sex offenders in the civil  
11 commitment and criminal justice systems for purposes of public health,  
12 safety, and welfare. Provisions address siting of and continued  
13 operation of facilities for persons civilly committed under chapter  
14 71.09 RCW and sentencing of persons who have committed sex offenses.  
15 Other provisions address the need for sex offender treatment providers  
16 with specific credentials. Additional provisions address the continued  
17 operation or authorized expansion of criminal justice facilities at  
18 McNeil Island, because these facilities are impacted by the civil  
19 facilities on McNeil Island for persons committed under chapter 71.09  
20 RCW.

21 **Sec. 102.** RCW 71.09.020 and 2001 c 286 s 4 are each amended to  
22 read as follows:

23 Unless the context clearly requires otherwise, the definitions in  
24 this section apply throughout this chapter.

25 (1) (~~("Sexually violent predator" means any person who has been~~  
26 ~~convicted of or charged with a crime of sexual violence and who suffers~~  
27 ~~from a mental abnormality or personality disorder which makes the~~  
28 ~~person likely to engage in predatory acts of sexual violence if not~~  
29 ~~confined in a secure facility.~~

30 (2) ~~"Mental abnormality" means a congenital or acquired condition~~  
31 ~~affecting the emotional or volitional capacity which predisposes the~~  
32 ~~person to the commission of criminal sexual acts in a degree~~  
33 ~~constituting such person a menace to the health and safety of others.))~~

34 "Department" means the department of social and health services.

1       (2) "Less restrictive alternative" means court-ordered treatment in  
2 a setting less restrictive than total confinement which satisfies the  
3 conditions set forth in RCW 71.09.092.

4       (3) "Likely to engage in predatory acts of sexual violence if not  
5 confined in a secure facility" means that the person more probably than  
6 not will engage in such acts if released unconditionally from detention  
7 on the sexually violent predator petition. Such likelihood must be  
8 evidenced by a recent overt act if the person is not totally confined  
9 at the time the petition is filed under RCW 71.09.030.

10       (4) "Mental abnormality" means a congenital or acquired condition  
11 affecting the emotional or volitional capacity which predisposes the  
12 person to the commission of criminal sexual acts in a degree  
13 constituting such person a menace to the health and safety of others.

14       (5) "Predatory" means acts directed towards: (a) Strangers; (b)  
15 individuals with whom a relationship has been established or promoted  
16 for the primary purpose of victimization; or (c) persons of casual  
17 acquaintance with whom no substantial personal relationship exists.

18       ~~((+5))~~ (6) "Recent overt act" means any act or threat that has  
19 either caused harm of a sexually violent nature or creates a reasonable  
20 apprehension of such harm in the mind of an objective person who knows  
21 of the history and mental condition of the person engaging in the act.

22       ~~((+6))~~ (7) "Risk potential activity" or "risk potential facility"  
23 means an activity or facility that provides a higher incidence of risk  
24 to the public from persons conditionally released from the special  
25 commitment center. Risk potential activities and facilities include:  
26 Public and private schools, school bus stops, licensed day care and  
27 licensed preschool facilities, public parks, publicly dedicated trails,  
28 sports fields, playgrounds, recreational and community centers,  
29 churches, synagogues, temples, mosques, and public libraries.

30       (8) "Secretary" means the secretary of social and health services  
31 or the secretary's designee.

32       (9) "Secure facility" means a residential facility for persons  
33 civilly confined under the provisions of this chapter that includes  
34 security measures sufficient to protect the community. Such facilities  
35 include total confinement facilities, secure community transition  
36 facilities, and any residence used as a court-ordered placement under  
37 RCW 71.09.096.

38       (10) "Secure community transition facility" means a residential  
39 facility for persons civilly committed and conditionally released to a

less restrictive alternative under this chapter. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facilities established pursuant to section 201 of this act and any community-based facilities established under this chapter and operated by the secretary or under contract with the secretary.

(11) "Sexually violent offense" means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter ((71.09-RCW)), has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection.

~~((7) "Less restrictive alternative" means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions set forth in RCW 71.09.092.~~

~~(8) "Secretary" means the secretary of social and health services or his or her designee.))~~

(12) "Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the

1 person likely to engage in predatory acts of sexual violence if not  
2 confined in a secure facility.

3 (13) "Total confinement facility" means a facility that provides  
4 supervision and sex offender treatment services in a total confinement  
5 setting. Total confinement facilities include the special commitment  
6 center and any similar facility designated as a secure facility by the  
7 secretary.

## 8 **PART II**

### 9 **SITING AND OPERATION OF SECURE COMMUNITY TRANSITION FACILITIES**

10 NEW SECTION. Sec. 201. A new section is added to chapter 71.09  
11 RCW to read as follows:

12 (1)(a) The secretary is authorized to site, construct, occupy, and  
13 operate a secure community transition facility on McNeil Island for  
14 persons authorized to petition for a less restrictive alternative under  
15 RCW 71.09.090(1) and who are conditionally released and a special  
16 commitment center on McNeil Island with up to four hundred four beds as  
17 a total confinement facility under this chapter, subject to  
18 appropriated funding for those purposes. The secure community  
19 transition facility shall be authorized for the number of beds needed  
20 to ensure compliance with the orders of the superior courts under this  
21 chapter and the federal district court for the western district of  
22 Washington. The total number of beds shall be comprised of fifteen  
23 transitional beds and nine long-term beds.

24 (b) For purposes of this subsection, "long-term beds" means beds  
25 for persons whose progress toward a less restrictive alternative at a  
26 level less secure than the secure community transition facility  
27 established in this subsection and whose transition into more complete  
28 community involvement is projected to take substantially longer than  
29 the average resident of this facility.

30 (2) Notwithstanding RCW 36.70A.103 or any other law, this statute  
31 preempts and supersedes local plans, development regulations,  
32 permitting requirements, inspection requirements, and all other laws as  
33 necessary to enable the secretary to site, construct, occupy, and  
34 operate a secure community transition facility on McNeil Island and a  
35 total confinement facility on McNeil Island.

36 (3) To the greatest extent possible, until June 30, 2003, persons  
37 who were not civilly committed from the county in which the secure

community transition facility established pursuant to subsection (1) of this section is located may not be conditionally released to a setting in that same county less restrictive than that facility.

(4) The department must:

(a) Identify the minimum and maximum number of secure community transition facility beds in addition to the facility established under subsection (1) of this section that may be necessary for the period of May 2004 through May 2007 and provide notice of these numbers to all counties by August 31, 2001;

(b) In consultation with the joint select committee established in section 225 of this act, develop and publish a notice of proposed rules containing criteria for the siting and operation of secure community transition facilities by October 1, 2001; and

(c) Provide a status report to the appropriate committees of the legislature by December 1, 2002, on the development of facilities under the incentive program established in section 204 of this act. The report shall include a projection of the anticipated number of secure community transition facility beds that will become operational between May 2004 and May 2007. If it appears that an insufficient number of beds will be operational, the department's report shall recommend a progression of methods to facilitate siting in counties and cities including, if necessary, preemption of local land use planning process and other laws.

(5)(a) The total number of secure community transition facility beds that may be required to be sited in a county between the effective date of this section and June 30, 2008, may be no greater than the total number of persons civilly committed from that county, or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause had been made on April 1, 2001. The total number of secure community transition facility beds required to be sited in each county between July 1, 2008, and June 30, 2015, may be no greater than the total number of persons civilly committed from that county or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause had been made as of July 1, 2008.

(b) Counties and cities that provide secure community transition facility beds above the maximum number that they could be required to site under this subsection are eligible for a bonus grant under the

1 incentive provisions in section 204 of this act. The county where the  
2 special commitment center is located shall receive this bonus grant for  
3 the number of beds in the facility established in subsection (1) of  
4 this section in excess of the maximum number established by this  
5 subsection.

6 (c) No secure community transition facilities in addition to the  
7 one established in subsection (1) of this section may be required to be  
8 sited in the county where the special commitment center is located  
9 until after June 30, 2008, provided however, that the county and its  
10 cities may elect to site additional secure community transition  
11 facilities and shall be eligible under the incentive provisions of  
12 section 204 of this act for any additional facilities meeting the  
13 requirements of that section.

14 (6) In identifying potential sites within a county for the location  
15 of a secure community transition facility, the department shall work  
16 with and assist local governments to provide for the equitable  
17 distribution of such facilities unless the local government  
18 affirmatively decides to group similar facilities.

19 (7)(a) "Equitable distribution" means siting or locating secure  
20 community transition facilities in a manner that will not cause a  
21 disproportionate grouping of similar facilities either in any one  
22 county, or in any one jurisdiction or community within a county, as  
23 relevant; and

24 (b) "Jurisdiction" means a city, town, or geographic area of a  
25 county in which district political or judicial authority may be  
26 exercised.

27 NEW SECTION. **Sec. 202.** A new section is added to chapter 72.09  
28 RCW to read as follows:

29 The secretary is authorized to operate a correctional facility on  
30 McNeil Island for the confinement of sex offenders and other offenders  
31 sentenced by the courts, and to make necessary repairs, renovations,  
32 additions, and improvements to state property for that purpose,  
33 notwithstanding any local comprehensive plans, development regulations,  
34 permitting requirements, or any other local laws. Operation of the  
35 correctional facility and other state facilities authorized by this  
36 section and other law includes access to adequate docking facilities on  
37 state-owned tidelands at the town of Steilacoom.

1       **Sec. 203.** RCW 36.70A.103 and 1991 sp.s. c 32 s 4 are each amended  
2 to read as follows:

3       State agencies shall comply with the local comprehensive plans and  
4 development regulations and amendments thereto adopted pursuant to this  
5 chapter except as otherwise provided in sections 201 (1) and (2) and  
6 202 of this act.

7       The provisions of this act do not affect the state's authority to  
8 site any other essential public facility under RCW 36.70A.200 in  
9 conformance with local comprehensive plans and development regulations  
10 adopted pursuant to chapter 36.70A RCW.

11       **NEW SECTION. Sec. 204.** A new section is added to chapter 71.09  
12 RCW to read as follows:

13       (1) Upon receiving the notification required by section 201 of this  
14 act, counties must promptly notify the cities within the county of the  
15 maximum number of secure community transition facility beds that may be  
16 required and the projected number of beds to be needed in that county.

17       (2) The incentive grants provided under this section are subject to  
18 the following provisions:

19       (a) Counties and the cities within the county must notify each  
20 other of siting plans to promote the establishment and equitable  
21 distribution of secure community transition facilities. In  
22 coordinating and deciding upon the siting of secure community  
23 transition facilities, great weight shall be given by the county and  
24 cities within the county to the number and location of existing  
25 residential facility beds operated by the department of corrections or  
26 the mental health division of the department of social and health  
27 services in the county;

28       (b) Development regulations, ordinances, plans, laws, and criteria  
29 established for siting must be consistent with statutory requirements  
30 and rules applicable to siting and operating secure community  
31 transition facilities;

32       (c) The minimum size for any facility is three beds; and

33       (d) The department must approve any sites selected.

34       (3) Any county or city that makes a commitment to initiate the  
35 process to site one or more secure community transition facilities by  
36 February 1, 2002, shall receive a planning grant as proposed and  
37 approved by the department of community, trade, and economic  
38 development.

1 (4) Any county or city that has issued all necessary permits by May  
2 1, 2003, for one or more secure community transition facilities that  
3 comply with the requirements of this section shall receive an incentive  
4 grant in the amount of fifty thousand dollars for each bed sited.

5 (5) To encourage the rapid permitting of sites, any county or city  
6 that has issued all necessary permits by January 1, 2003, for one or  
7 more secure community transition facilities that comply with the  
8 requirements of this section shall receive a bonus in the amount of  
9 twenty percent of the amount provided under subsection (4) of this  
10 section.

11 (6) Any county or city that establishes secure community transition  
12 facility beds in excess of the maximum number that could be required to  
13 be sited in that county shall receive a bonus payment of one hundred  
14 thousand dollars for each bed established in excess of the maximum  
15 requirement.

16 (7) No payment shall be made under this section until all necessary  
17 permits have been issued.

18 **Sec. 205.** RCW 36.70A.200 and 1998 c 171 s 3 are each amended to  
19 read as follows:

20 (1) The comprehensive plan of each county and city that is planning  
21 under ~~((this chapter))~~ RCW 36.70A.040 shall include a process for  
22 identifying and siting essential public facilities. Essential public  
23 facilities include those facilities that are typically difficult to  
24 site, such as airports, state education facilities and state or  
25 regional transportation facilities as defined in RCW 47.06.140, state  
26 and local correctional facilities, solid waste handling facilities, and  
27 in-patient facilities including substance abuse facilities, mental  
28 health facilities, ~~((and))~~ group homes, and secure community transition  
29 facilities as defined in RCW 71.09.020.

30 (2) Each county and city planning under RCW 36.70A.040 shall, not  
31 later than the deadline specified in RCW 36.70A.130, establish a  
32 process, or amend its existing process, for identifying and siting  
33 essential public facilities, and adopt or amend its development  
34 regulations as necessary to provide for the siting of secure community  
35 transition facilities consistent with statutory requirements and rules  
36 applicable to these facilities.

37 (3) Any city or county not planning under RCW 36.70A.040 shall, not  
38 later than the deadline specified in RCW 36.70A.130, establish a



1 process for siting secure community transition facilities and adopt or  
2 amend its development regulations as necessary to provide for the  
3 siting of such facilities consistent with statutory requirements and  
4 rules applicable to these facilities.

5 (4) The office of financial management shall maintain a list of  
6 those essential state public facilities that are required or likely to  
7 be built within the next six years. The office of financial management  
8 may at any time add facilities to the list.

9 (5) No local comprehensive plan or development regulation may  
10 preclude the siting of essential public facilities. No county or city  
11 may preclude the siting of secure community transition facilities.

12 NEW SECTION. Sec. 206. A new section is added to chapter 71.09  
13 RCW to read as follows:

14 The provisions of this act shall not be construed to limit siting  
15 of secure community transition facilities to residential neighborhoods.

16 NEW SECTION. Sec. 207. Beginning on the effective date of this  
17 section, the state shall immediately enter into negotiations for a  
18 mitigation agreement with: (1) The county in which the secure  
19 community transition facility established pursuant to section 201(1) of  
20 this act is located; (2) each community in which the persons from that  
21 facility will reside or regularly spend time in pursuant to court  
22 orders for regular work or education, or to receive social services, or  
23 will regularly be transported through to reach those other communities;  
24 and (3) educational institutions in the communities identified in  
25 subsections (1) and (2) of this section. The negotiations must be  
26 toward an agreement that will provide state funding, as appropriated  
27 for this purpose, in an amount adequate to mitigate anticipated or  
28 realized increased costs resulting from any increased risks to public  
29 safety brought about by the presence of sexually violent predators in  
30 those communities due to the siting of the secure community transition  
31 facility established pursuant to section 201(1) of this act. This  
32 section expires June 30, 2003.

33 NEW SECTION. Sec. 208. A new section is added to chapter 71.09  
34 RCW to read as follows:

35 (1) The department shall make reasonable efforts to distribute the  
36 impact of the employment, education, and social services needs of the

1 residents of the secure community transition facility established  
2 pursuant to section 201(1) of this act among the adjoining counties and  
3 not to concentrate the residents' use of resources in any one  
4 community.

5 (2) The department shall develop policies to ensure that, to the  
6 extent possible, placement of persons eligible in the future for  
7 conditional release to a setting less restrictive than the facility  
8 established pursuant to section 201(1) of this act will be equitably  
9 distributed among the counties and within jurisdictions in the county.

10 NEW SECTION. **Sec. 209.** The department of social and health  
11 services shall, by August 1, 2001, and prior to operating the secure  
12 community transition facility established pursuant to section 201(1) of  
13 this act, hold at least three public hearings in the affected  
14 communities within the county where the facility is located.

15 The purpose of the public hearings is to seek input from county and  
16 city officials, local law enforcement officials, and the public  
17 regarding operations and security measures needed to adequately protect  
18 the community from any increased risk to public safety brought about by  
19 the presence of persons conditionally released from the special  
20 commitment center in these communities due to the siting of the  
21 facility. The department shall ensure that persons have a full  
22 opportunity to speak to the issues to be addressed during each hearing.

23 NEW SECTION. **Sec. 210.** The secretary of social and health  
24 services shall coordinate with the secretary of corrections and the  
25 appropriate local or state law enforcement agency or agencies to  
26 establish a twenty-four-hour law enforcement presence on McNeil Island  
27 before any person is admitted to the secure community transition  
28 facility established under section 201(1) of this act. Law enforcement  
29 shall coordinate with the emergency response team for McNeil Island to  
30 provide planning and coordination in the event of an escape from the  
31 special commitment center or the secure community transition facility.

32 In addition, or if no law enforcement agency will provide a law  
33 enforcement presence on the island, not more than ten correctional  
34 employees, as selected by the secretary of corrections, who are members  
35 of the emergency response team for the McNeil Island correctional  
36 facility, shall have the powers and duties of a general authority peace  
37 officer while acting in a law enforcement capacity. If there is no law

1 enforcement agency to provide the law enforcement presence, those  
2 correctional employees selected as peace officers shall provide a  
3 twenty-four-hour presence and shall not have correctional duties at the  
4 correctional facility in addition to the emergency response team while  
5 acting in a law enforcement capacity.

6 NEW SECTION. **Sec. 211.** A new section is added to chapter 71.09  
7 RCW to read as follows:

8 (1) By August 1, 2001, the department must provide the appropriate  
9 committees of the legislature with a transportation plan to address the  
10 issues of coordinating the movement of residents of the secure  
11 community transition facility established pursuant to section 201(1) of  
12 this act between McNeil Island and the mainland with the movement of  
13 others who must use the same docks or equipment within the funds  
14 appropriated for this purpose.

15 (2) If the department does not provide a separate vessel for  
16 transporting residents of the secure community transition facility  
17 established in section 201(1) of this act between McNeil Island and the  
18 mainland, the plan shall include at least the following components:

19 (a) The residents shall be separated from minors and vulnerable  
20 adults, except vulnerable adults who have been found to be sexually  
21 violent predators.

22 (b) The residents shall not be transported during times when  
23 children are normally coming to and from the mainland for school.

24 (3) The department shall designate a separate waiting area at the  
25 points of debarkation, and residents shall be required to remain in  
26 this area while awaiting transportation.

27 (4) The department shall provide law enforcement agencies in the  
28 counties and cities in which residents of the secure community  
29 transition facility established pursuant to section 201(1) of this act  
30 regularly participate in employment, education, or social services, or  
31 through which these persons are regularly transported, with a copy of  
32 the court's order of conditional release with respect to these persons.

33 NEW SECTION. **Sec. 212.** A new section is added to chapter 71.09  
34 RCW to read as follows:

35 When considering whether a person civilly committed under this  
36 chapter and conditionally released to a secure community transition  
37 facility is appropriate for release to a placement that is less

1 restrictive than that facility, the court shall comply with the  
2 procedures set forth in RCW 71.09.090 through 71.09.096. In addition,  
3 the court shall consider whether the person has progressed in treatment  
4 to the point that a significant change in the person's routine,  
5 including but not limited to a change of employment, education,  
6 residence, or sex offender treatment provider will not cause the person  
7 to regress to the point that the person presents a greater risk to the  
8 community than can reasonably be addressed in the proposed placement.

9 NEW SECTION. **Sec. 213.** A new section is added to chapter 71.09  
10 RCW to read as follows:

11 (1) Except with respect to the secure community transition facility  
12 established pursuant to section 201 of this act, the secretary shall  
13 adopt rules that balance the average response time of emergency  
14 services to the general area of a proposed secure community transition  
15 facility against the proximity of the proposed site to risk potential  
16 activities and facilities in existence at the time the site is listed  
17 for consideration.

18 (2) In balancing the competing criteria of proximity and response  
19 time the rule shall endeavor to achieve an average law enforcement  
20 response time not greater than five minutes and in no case shall the  
21 rule permit location of a facility adjacent to, immediately across a  
22 street or parking lot from, or within the line of sight of a risk  
23 potential activity or facility in existence at the time a site is  
24 listed for consideration. "Within the line of sight" means that it is  
25 possible to reasonably visually distinguish and recognize individuals.

26 (3) The rule shall require that great weight be given to sites that  
27 are the farthest removed from any risk potential activity.

28 (4) The rule shall specify how distance from the location is  
29 measured and any variations in the measurement based on the size of the  
30 property within which a proposed facility is to be located.

31 (5) The rule shall establish a method to analyze and compare the  
32 criteria for each site in terms of public safety and security, site  
33 characteristics, and program components. In making a decision  
34 regarding a site following the analysis and comparison, the secretary  
35 shall give priority to public safety and security considerations. The  
36 analysis and comparison of the criteria are to be documented and made  
37 available at the public hearings prescribed in section 219 of this act.

1        NEW SECTION.    **Sec. 214.**    A new section is added to chapter 71.09  
2    RCW to read as follows:

3        The secretary shall establish criteria for the siting of secure  
4    community transition facilities, other than the secure community  
5    transition facility established pursuant to section 201 of this act,  
6    which shall include at least the following minimum requirements:

7        (1) Any real property listed for consideration for the location of  
8    or use as a secure community transition facility must meet all of the  
9    following criteria:

10       (a) The proximity and response time criteria established under  
11    section 213 of this act;

12       (b) The site or building is available for lease for the anticipated  
13    use period or for purchase;

14       (c) Security monitoring services and appropriate back-up systems  
15    are available and reliable;

16       (d) Appropriate mental health and sex offender treatment providers  
17    must be available within a reasonable commute; and

18       (e) Appropriate permitting for a secure community transition  
19    facility must be possible under the zoning code of the local  
20    jurisdiction.

21       (2) For sites which meet the criteria of subsection (1) of this  
22    section, the department shall analyze and compare the criteria in  
23    subsections (3) through (5) of this section using the method  
24    established in section 213 of this act.

25       (3) Public safety and security criteria shall include at least the  
26    following:

27       (a) Whether limited visibility between the facility and adjacent  
28    properties can be achieved prior to placement of any person;

29       (b) The distance from, and number of, risk potential activities and  
30    facilities, as measured using the rules adopted under section 213 of  
31    this act;

32       (c) The existence of or ability to establish barriers between the  
33    site and the risk potential facilities and activities;

34       (d) Suitability of the buildings to be used for the secure  
35    community transition facility with regard to existing or feasibly  
36    modified features; and

37       (e) The availability of electronic monitoring that allows a  
38    resident's location to be determined with specificity.

(4) Site characteristics criteria shall include at least the following:

(a) Reasonableness of rental, lease, or sale terms including length and renewability of a lease or rental agreement;

(b) Traffic and access patterns associated with the real property;

(c) Feasibility of complying with zoning requirements within the necessary time frame; and

(d) A contractor or contractors are available to install, monitor, and repair the necessary security and alarm systems.

(5) Program characteristics criteria shall include at least the following:

(a) Reasonable proximity to available medical, mental health, sex offender, and chemical dependency treatment providers and facilities;

(b) Suitability of the location for programming, staffing, and support considerations;

(c) Proximity to employment, educational, vocational, and other treatment plan components.

(6) For purposes of this section "available" or "availability" of qualified treatment providers includes provider qualifications and willingness to provide services, average commute time, and cost of services.

**NEW SECTION.** **Sec. 215.** A new section is added to chapter 71.09 RCW to read as follows:

(1) Security systems for all secure community transition facilities shall meet the following minimum qualifications:

(a) The security panel must be a commercial grade panel with tamper-proof switches and a key-lock to prevent unauthorized access.

(b) There must be an emergency electrical supply system which shall include a battery back-up system and a generator.

(c) The system must include personal panic devices for all staff.

(d) The security system must be capable of being monitored and signaled either by telephone through either a land or cellular telephone system or by private radio network in the event of a total dial-tone failure or through equivalent technologies.

(e) The department shall issue photo-identification badges to all staff which must be worn at all times.

(2) Security systems for the secure community transition facility established pursuant to section 201(1) of this act shall also include

1 a fence and provide the maximum protection appropriate in a civil  
2 facility for persons in less than total confinement.

3 NEW SECTION. **Sec. 216.** A new section is added to chapter 71.09  
4 RCW to read as follows:

5 (1) Secure community transition facilities shall meet the following  
6 minimum staffing requirements:

7 (a) At any time the census of a facility is six or fewer residents,  
8 the facility shall maintain a minimum staffing ratio of one staff per  
9 resident during normal waking hours and two awake staff per three  
10 residents during normal sleeping hours.

11 (b) At any time the census of a facility is six or fewer residents,  
12 all staff shall be classified as residential rehabilitation counselor  
13 II or have a classification that indicates a higher level of skill,  
14 experience, and training.

15 (c) Before being assigned to a facility, all staff shall have  
16 training in sex offender issues, self-defense, and crisis de-escalation  
17 skills in addition to departmental orientation and, as appropriate,  
18 management training. All staff with resident treatment or care duties  
19 must participate in ongoing in-service training.

20 (d) All staff must pass a departmental background check and the  
21 check is not subject to the limitations in chapter 9.96A RCW. A person  
22 who has been convicted of a felony, or any sex offense, may not be  
23 employed at the secure community transition facility or be approved as  
24 an escort for a resident of the facility.

25 (2) With respect to the facility established pursuant to section  
26 201(1) of this act, the department shall, no later than December 1,  
27 2001, provide a staffing plan to the appropriate committees of the  
28 legislature that will cover the growth of that facility to its full  
29 capacity.

30 NEW SECTION. **Sec. 217.** A new section is added to chapter 71.09  
31 RCW to read as follows:

32 (1) Unless otherwise ordered by the court:

33 (a) Residents of a secure community transition facility shall wear  
34 electronic monitoring devices at all times. To the extent that  
35 electronic monitoring devices that employ global positioning system  
36 technology are available and funds for this purpose are appropriated by  
37 the legislature, the department shall use these devices.

(b) At least one staff member, or other court-authorized and department-approved person must escort each resident when the resident leaves the secure community transition facility for appointments, employment, or other approved activities. Escorting persons must supervise the resident closely and maintain close proximity to the resident. The escort must immediately notify the department of any serious violation, as defined in section 221 of this act, by the resident and must immediately notify law enforcement of any violation of law by the resident.

(2) Staff members of the special commitment center and any other total confinement facility and any secure community transition facility must be trained in self-defense and appropriate crisis responses including incident de-escalation. Prior to escorting a person outside of a facility, staff members must also have training in the offense pattern of the offender they are escorting.

(3) Any escort must carry a cellular telephone or a similar device at all times when escorting a resident of a secure community transition facility.

(4) The department shall require training in offender pattern, self-defense, and incident response for all court-authorized escorts who are not employed by the department or the department of corrections.

**NEW SECTION. Sec. 218.** A new section is added to chapter 71.09 RCW to read as follows:

Notwithstanding the provisions of section 217 of this act, residents of the secure community transition facility established pursuant to section 201(1) of this act must be escorted at any time the resident leaves the facility.

**NEW SECTION. Sec. 219.** A new section is added to chapter 71.09 RCW to read as follows:

(1) Whenever the department operates, or the secretary enters into a contract to operate, a secure community transition facility except the secure community transition facility established pursuant to section 201(1) of this act, the secure community transition facility may be operated only after the public notification and opportunities for review and comment as required by this section.



(2) The secretary shall establish a process for early and continuous public participation in establishing or relocating secure community transition facilities. The process shall include, at a minimum, public meetings in the local communities affected, as well as opportunities for written and oral comments, in the following manner:

(a) If there are more than three sites initially selected as potential locations and the selection process by the secretary or a service provider reduces the number of possible sites for a secure community transition facility to no fewer than three, the secretary or the chief operating officer of the service provider shall notify the public of the possible siting and hold at least two public hearings in each community where a secure community transition facility may be sited.

(b) When the secretary or service provider has determined the secure community transition facility's location, the secretary or the chief operating officer of the service provider shall hold at least one additional public hearing in the community where the secure community transition facility will be sited.

(c) When the secretary has entered negotiations with a service provider and only one site is under consideration, then at least two public hearings shall be held.

(d) To provide adequate notice of, and opportunity for interested persons to comment on, a proposed location, the secretary or the chief operating officer of the service provider shall provide at least fourteen days' advance notice of the meeting to all newspapers of general circulation in the community, all radio and television stations generally available to persons in the community, any school district in which the secure community transition facility would be sited or whose boundary is within two miles of a proposed secure community transition facility, any library district in which the secure community transition facility would be sited, local business or fraternal organizations that request notification from the secretary or agency, and any person or property owner within a one-half mile radius of the proposed secure community transition facility. Before initiating this process, the department of social and health services shall contact local government planning agencies in the communities containing the proposed secure community transition facility. The department of social and health services shall coordinate with local government agencies to ensure that

opportunities are provided for effective citizen input and to reduce the duplication of notice and meetings.

(3) If local government land use regulations require that a special use or conditional use permit be submitted and approved before a secure community transition facility can be sited, and the process for obtaining such a permit includes public notice and hearing requirements similar to those required under this section, the requirements of this section shall not apply to the extent they would duplicate requirements under the local land use regulations.

(4) This section applies only to secure community transition facilities sited after the effective date of this section.

NEW SECTION. **Sec. 220.** A new section is added to chapter 71.09 RCW to read as follows:

(1) The secretary shall develop a process with local governments that allows each community in which a secure community transition facility is located to establish operational advisory boards of at least seven persons for the secure community transition facilities. The department may conduct community awareness activities to publicize this opportunity. The operational advisory boards developed under this section shall be implemented following the decision to locate a secure community transition facility in a particular community.

(2) The operational advisory boards may review and make recommendations regarding the security and operations of the secure community transition facility and conditions or modifications necessary with relation to any person who the secretary proposes to place in the secure community transition facility.

(3) The facility management must consider the recommendations of the community advisory boards. Where the facility management does not implement an operational advisory board recommendation, the management must provide a written response to the operational advisory board stating its reasons for its decision not to implement the recommendation.

(4) The operational advisory boards, their members, and any agency represented by a member shall not be liable in any cause of action as a result of its recommendations unless the advisory board acts with gross negligence or bad faith in making a recommendation.

1        NEW SECTION.    **Sec. 221.**    A new section is added to chapter 71.09  
2    RCW to read as follows:

3        (1) The secretary shall adopt a violation reporting policy for  
4    persons conditionally released to less restrictive alternative  
5    placements. The policy shall require written documentation by the  
6    department and service providers of all violations of conditions set by  
7    the department, the department of corrections, or the court and  
8    establish criteria for returning a violator to the special commitment  
9    center or a secure community transition facility with a higher degree  
10   of security. Any conditionally released person who commits a serious  
11   violation of conditions shall be returned to the special commitment  
12   center, unless arrested by a law enforcement officer, and the court  
13   shall be notified immediately and shall initiate proceedings under RCW  
14   71.09.098 to revoke or modify the less restrictive alternative  
15   placement. Nothing in this section limits the authority of the  
16   department to return a person to the special commitment center based on  
17   a violation that is not a serious violation as defined in this section.  
18   For the purposes of this section, "serious violation" includes but is  
19   not limited to:

20        (a) The commission of any criminal offense;

21        (b) Any unlawful use or possession of a controlled substance; and

22        (c) Any violation of conditions targeted to address the person's  
23   documented pattern of offense that increases the risk to public safety.

24        (2) When a person is conditionally released to a less restrictive  
25   alternative under this chapter and is under the supervision of the  
26   department of corrections, notice of any violation of the person's  
27   conditions of release must also be made to the department of  
28   corrections.

29        (3) Whenever the secretary contracts with a service provider to  
30   operate a secure community transition facility, the contract shall  
31   include a requirement that the service provider must report to the  
32   department of social and health services any known violation of  
33   conditions committed by any resident of the secure community transition  
34   facility.

35        (4) The secretary shall document in writing all violations,  
36   penalties, actions by the department of social and health services to  
37   remove persons from a secure community transition facility, and  
38   contract terminations. The secretary shall compile this information  
39   and submit it to the appropriate committees of the legislature on an

1 annual basis. The secretary shall give great weight to a service  
2 provider's record of violations, penalties, actions by the department  
3 of social and health services or the department of corrections to  
4 remove persons from a secure community transition facility, and  
5 contract terminations in determining whether to execute, renew, or  
6 renegotiate a contract with a service provider.

7 NEW SECTION. **Sec. 222.** A new section is added to chapter 71.09  
8 RCW to read as follows:

9 Whenever the secretary contracts with a provider to operate a  
10 secure community transition facility, the secretary shall include in  
11 the contract provisions establishing intermediate contract enforcement  
12 remedies.

13 NEW SECTION. **Sec. 223.** A new section is added to chapter 71.09  
14 RCW to read as follows:

15 A conditional release from a total confinement facility to a less  
16 restrictive alternative is a release that subjects the conditionally  
17 released person to the registration requirements specified in RCW  
18 9A.44.130 and to community notification under RCW 4.24.550.

19 When a person is conditionally released to the secure community  
20 transition facility established pursuant to section 201(1) of this act,  
21 the sheriff must provide each household on McNeil Island with the  
22 community notification information provided for under RCW 4.24.550.

23 NEW SECTION. **Sec. 224.** A new section is added to chapter 71.09  
24 RCW to read as follows:

25 When a person civilly committed under this chapter is conditionally  
26 released to a less restrictive alternative placement at a facility  
27 owned or operated under contract with the state, any employer who hires  
28 the person for a position or any educational institution that enrolls  
29 the person for a program is eligible for an incentive grant from the  
30 state up to five thousand dollars per year that the person remains  
31 employed or enrolled on at least a half-time basis in a job or program  
32 that meets requirements approved by the court. The provisions of this  
33 section may not establish employer or educational institution liability  
34 for the subsequent criminal acts of a conditionally released person for  
35 the decision to hire or enroll that person. An employer or educational  
36 institution that accepts an incentive grant under this section shall

1 not be civilly liable for the subsequent criminal acts of a  
2 conditionally released person unless the employer's or educational  
3 institution's conduct constitutes gross negligence or intentional  
4 misconduct. An employer that hires a conditionally released person  
5 must notify all other employees of the conditionally released person's  
6 status. Notification for conditionally released persons who enroll in  
7 an institution of higher education shall be made pursuant to the  
8 provisions of RCW 9A.44.130 related to sex offenders enrolled in  
9 institutions of higher education and RCW 4.24.550. This section  
10 applies only to conditionally released persons whose court approved  
11 treatment plan includes permission or a requirement for the person to  
12 obtain education or employment and to employment positions or  
13 educational programs that meet the requirements of the court-approved  
14 treatment plan.

15 NEW SECTION. **Sec. 225.** (1) A joint select committee on the  
16 equitable distribution of secure community transition facilities is  
17 established.

18 (2) The joint select committee shall consist of the following  
19 persons:

20 (a) One member from each of the two largest caucuses of the senate,  
21 appointed by the president of the senate, at least one member being a  
22 member of the senate human services and corrections committee;

23 (b) One member from each of the two largest caucuses of the house  
24 of representatives, appointed by the co-speakers of the house of  
25 representatives, at least one member being a member of the house  
26 criminal justice and corrections committee;

27 (c) One member from the department of social and health services;

28 (d) One member from the Washington state association of counties;

29 (e) One member from the association of Washington cities;

30 (f) One member representing crime victims, appointed jointly by the  
31 president of the senate and the co-speakers of the house of  
32 representatives;

33 (g) One person selected by the governor; and

34 (h) Two persons representing local law enforcement, one  
35 representing cities and one representing counties.

36 (3) The chair of the joint select committee shall be a legislative  
37 member chosen by the joint select committee members.

(4) The joint select committee shall review and make recommendations regarding:

(a) Any necessary specifications or revisions to the policy of equitable distribution of secure community transition facilities;

(b) Any necessary revisions to the provisions related to siting and operating secure community transition facilities in sections 213 through 218 and 222 of this act; and

(c) Except with respect to the facility established pursuant to section 201(1) of this act, a method for determining possible mitigation measures for compensating communities for any increased risks to public safety brought about by the siting of a secure community transition facility in a community.

(5) The joint select committee shall present a report of its findings and recommendations to the governor and the appropriate committees of the legislature, including any proposed legislation, not later than November 15, 2001.

(6) The joint select committee may, where feasible, consult with individuals from the public and private sector in carrying out its duties under this section.

(7) Nonlegislative members of the joint select committee shall serve without compensation, but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislative members of the joint select committee shall be reimbursed for travel expenses as provided in RCW 44.04.120.

(8) Staff of senate committee services and the office of program research of the house of representatives shall provide support to the joint select committee.

(9) This section expires March 1, 2002.

**NEW SECTION.** **Sec. 226.** A new section is added to chapter 71.09 RCW to read as follows:

Nothing in this act shall operate to restrict a court's authority to make less restrictive alternative placements to a committed person's individual residence or to a setting less restrictive than a secure community transition facility. A court-ordered less restrictive alternative placement to a committed person's individual residence is not a less restrictive alternative placement to a secure community transition facility.

PART III  
SENTENCING STRUCTURE

**Sec. 301.** RCW 9.94A.030 and 2001 c 287 s 4 and 2001 c 95 s 1 are each reenacted and amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.145, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

~~((+2))~~ (3) "Commission" means the sentencing guidelines commission.

~~((+3))~~ (4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

~~((+4))~~ (5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.120(2)(b), 9.94A.650 through 9.94A.670, 9.94A.137, 9.94A.700 through 9.94A.715, or 9.94A.383, served in the community subject to controls placed on the offender's movement and activities by the department. For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

~~((+5))~~ (6) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.715, as established by the commission or the legislature under RCW 9.94A.040, for crimes committed on or after July 1, 2000.

~~((+6))~~ (7) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or

1 postrelease supervision, which begins either upon completion of the  
2 term of confinement (postrelease supervision) or at such time as the  
3 offender is transferred to community custody in lieu of earned release.  
4 Community placement may consist of entirely community custody, entirely  
5 postrelease supervision, or a combination of the two.

6       (~~(+7)~~) (8) "Community service" means compulsory service, without  
7 compensation, performed for the benefit of the community by the  
8 offender.

9       (~~(+8)~~) (9) "Community supervision" means a period of time during  
10 which a convicted offender is subject to crime-related prohibitions and  
11 other sentence conditions imposed by a court pursuant to this chapter  
12 or RCW 16.52.200(6) or 46.61.524. Where the court finds that any  
13 offender has a chemical dependency that has contributed to his or her  
14 offense, the conditions of supervision may, subject to available  
15 resources, include treatment. For purposes of the interstate compact  
16 for out-of-state supervision of parolees and probationers, RCW  
17 9.95.270, community supervision is the functional equivalent of  
18 probation and should be considered the same as probation by other  
19 states.

20       (~~(+9)~~) (10) "Confinement" means total or partial confinement.

21       (~~(+10)~~) (11) "Conviction" means an adjudication of guilt pursuant  
22 to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of  
23 guilty, and acceptance of a plea of guilty.

24       (~~(+11)~~) (12) "Crime-related prohibition" means an order of a court  
25 prohibiting conduct that directly relates to the circumstances of the  
26 crime for which the offender has been convicted, and shall not be  
27 construed to mean orders directing an offender affirmatively to  
28 participate in rehabilitative programs or to otherwise perform  
29 affirmative conduct. However, affirmative acts necessary to monitor  
30 compliance with the order of a court may be required by the department.

31       (~~(+12)~~) (13) "Criminal history" means the list of a defendant's  
32 prior convictions and juvenile adjudications, whether in this state, in  
33 federal court, or elsewhere. The history shall include, where known,  
34 for each conviction (a) whether the defendant has been placed on  
35 probation and the length and terms thereof; and (b) whether the  
36 defendant has been incarcerated and the length of incarceration.

37       (~~(+13)~~) (14) "Day fine" means a fine imposed by the sentencing  
38 court that equals the difference between the offender's net daily



1 income and the reasonable obligations that the offender has for the  
2 support of the offender and any dependents.

3 ~~((+14+))~~ (15) "Day reporting" means a program of enhanced  
4 supervision designed to monitor the offender's daily activities and  
5 compliance with sentence conditions, and in which the offender is  
6 required to report daily to a specific location designated by the  
7 department or the sentencing court.

8 ~~((+15+))~~ (16) "Department" means the department of corrections.

9 ~~((+16+))~~ (17) "Determinate sentence" means a sentence that states  
10 with exactitude the number of actual years, months, or days of total  
11 confinement, of partial confinement, of community supervision, the  
12 number of actual hours or days of community service work, or dollars or  
13 terms of a legal financial obligation. The fact that an offender  
14 through earned release can reduce the actual period of confinement  
15 shall not affect the classification of the sentence as a determinate  
16 sentence.

17 ~~((+17+))~~ (18) "Disposable earnings" means that part of the earnings  
18 of an offender remaining after the deduction from those earnings of any  
19 amount required by law to be withheld. For the purposes of this  
20 definition, "earnings" means compensation paid or payable for personal  
21 services, whether denominated as wages, salary, commission, bonuses, or  
22 otherwise, and, notwithstanding any other provision of law making the  
23 payments exempt from garnishment, attachment, or other process to  
24 satisfy a court-ordered legal financial obligation, specifically  
25 includes periodic payments pursuant to pension or retirement programs,  
26 or insurance policies of any type, but does not include payments made  
27 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
28 or Title 74 RCW.

29 ~~((+18+))~~ (19) "Drug offender sentencing alternative" is a  
30 sentencing option available to persons convicted of a felony offense  
31 other than a violent offense or a sex offense and who are eligible for  
32 the option under RCW 9.94A.660.

33 ~~((+19+))~~ (20) "Drug offense" means:

34 (a) Any felony violation of chapter 69.50 RCW except possession of  
35 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
36 controlled substance (RCW 69.50.403);

37 (b) Any offense defined as a felony under federal law that relates  
38 to the possession, manufacture, distribution, or transportation of a  
39 controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

~~((+20+))~~ (21) "Earned release" means earned release from confinement as provided in RCW 9.94A.150.

~~((+21+))~~ (22) "Escape" means:

(a) ~~((Escape by a))~~ Sexually violent predator escape (RCW 9A.76.--- (section 1, chapter 287, Laws of 2001, as amended by section 360, chapter ... (this act), Laws of 2001 2nd sp. sess.)), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

~~((+22+))~~ (23) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

~~((+23+))~~ (24) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

~~((+24+))~~ (25) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

~~((+25+))~~ (26) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

~~((+26+))~~ (27) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense,

1 fines, and any other financial obligation that is assessed to the  
2 offender as a result of a felony conviction. Upon conviction for  
3 vehicular assault while under the influence of intoxicating liquor or  
4 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the  
5 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),  
6 legal financial obligations may also include payment to a public agency  
7 of the expense of an emergency response to the incident resulting in  
8 the conviction, subject to RCW 38.52.430.

9 ((+27+)) (28) "Most serious offense" means any of the following  
10 felonies or a felony attempt to commit any of the following felonies:

11 (a) Any felony defined under any law as a class A felony or  
12 criminal solicitation of or criminal conspiracy to commit a class A  
13 felony;

14 (b) Assault in the second degree;

15 (c) Assault of a child in the second degree;

16 (d) Child molestation in the second degree;

17 (e) Controlled substance homicide;

18 (f) Extortion in the first degree;

19 (g) Incest when committed against a child under age fourteen;

20 (h) Indecent liberties;

21 (i) Kidnapping in the second degree;

22 (j) Leading organized crime;

23 (k) Manslaughter in the first degree;

24 (l) Manslaughter in the second degree;

25 (m) Promoting prostitution in the first degree;

26 (n) Rape in the third degree;

27 (o) Robbery in the second degree;

28 (p) Sexual exploitation;

29 (q) Vehicular assault;

30 (r) Vehicular homicide, when proximately caused by the driving of  
31 any vehicle by any person while under the influence of intoxicating  
32 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
33 any vehicle in a reckless manner;

34 (s) Any other class B felony offense with a finding of sexual  
35 motivation;

36 (t) Any other felony with a deadly weapon verdict under RCW  
37 9.94A.125;

38 (u) Any felony offense in effect at any time prior to December 2,  
39 1993, that is comparable to a most serious offense under this

subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.

~~((+28+))~~ (29) "Nonviolent offense" means an offense which is not a violent offense.

~~((+29+))~~ (30) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

~~((+30+))~~ (31) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.

~~((+31+))~~ (32) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under

1 the laws of this state would be considered most serious offenses and  
2 would be included in the offender score under RCW 9.94A.360; provided  
3 that of the two or more previous convictions, at least one conviction  
4 must have occurred before the commission of any of the other most  
5 serious offenses for which the offender was previously convicted; or

6 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
7 of a child in the first degree, child molestation in the first degree,  
8 rape in the second degree, rape of a child in the second degree, or  
9 indecent liberties by forcible compulsion; (B) any of the following  
10 offenses with a finding of sexual motivation: Murder in the first  
11 degree, murder in the second degree, homicide by abuse, kidnapping in  
12 the first degree, kidnapping in the second degree, assault in the first  
13 degree, assault in the second degree, assault of a child in the first  
14 degree, or burglary in the first degree~~((, with a finding of sexual~~  
15 ~~motivation))~~; or (C) an attempt to commit any crime listed in this  
16 subsection ~~((+31+))~~ (32)(b)(i); and

17 (ii) Has, before the commission of the offense under (b)(i) of this  
18 subsection, been convicted as an offender on at least one occasion,  
19 whether in this state or elsewhere, of an offense listed in (b)(i) of  
20 this subsection. A conviction for rape of a child in the first degree  
21 constitutes a conviction under (b)(i) of this subsection only when the  
22 offender was sixteen years of age or older when the offender committed  
23 the offense. A conviction for rape of a child in the second degree  
24 constitutes a conviction under (b)(i) of this subsection only when the  
25 offender was eighteen years of age or older when the offender committed  
26 the offense.

27 ~~((+32+))~~ (33) "Postrelease supervision" is that portion of an  
28 offender's community placement that is not community custody.

29 ~~((+33+))~~ (34) "Restitution" means a specific sum of money ordered  
30 by the sentencing court to be paid by the offender to the court over a  
31 specified period of time as payment of damages. The sum may include  
32 both public and private costs.

33 ~~((+34+))~~ (35) "Risk assessment" means the application of an  
34 objective instrument supported by research and adopted by the  
35 department for the purpose of assessing an offender's risk of  
36 reoffense, taking into consideration the nature of the harm done by the  
37 offender, place and circumstances of the offender related to risk, the  
38 offender's relationship to any victim, and any information provided to

1 the department by victims. The results of a risk assessment shall not  
2 be based on unconfirmed or unconfirmable allegations.

3 ~~((+35+))~~ (36) "Serious traffic offense" means:

4 (a) Driving while under the influence of intoxicating liquor or any  
5 drug (RCW 46.61.502), actual physical control while under the influence  
6 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving  
7 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
8 or

9 (b) Any federal, out-of-state, county, or municipal conviction for  
10 an offense that under the laws of this state would be classified as a  
11 serious traffic offense under (a) of this subsection.

12 ~~((+36+))~~ (37) "Serious violent offense" is a subcategory of violent  
13 offense and means:

14 (a)(i) Murder in the first degree;

15 (ii) Homicide by abuse;

16 (iii) Murder in the second degree;

17 (iv) Manslaughter in the first degree;

18 (v) Assault in the first degree;

19 (vi) Kidnapping in the first degree;

20 (vii) Rape in the first degree;

21 (viii) Assault of a child in the first degree; or

22 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
23 commit one of these felonies; or

24 (b) Any federal or out-of-state conviction for an offense that  
25 under the laws of this state would be a felony classified as a serious  
26 violent offense under (a) of this subsection.

27 ~~((+37+))~~ (38) "Sex offense" means:

28 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
29 RCW 9A.44.130(11);

30 (ii) A violation of RCW 9A.64.020;

31 (iii) A felony that is a violation of chapter 9.68A RCW other than  
32 RCW 9.68A.070 or 9.68A.080; or

33 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
34 criminal solicitation, or criminal conspiracy to commit such crimes;

35 (b) Any conviction for a felony offense in effect at any time prior  
36 to July 1, 1976, that is comparable to a felony classified as a sex  
37 offense in (a) of this subsection;

38 (c) A felony with a finding of sexual motivation under RCW  
39 9.94A.127 or 13.40.135; or

(d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

~~((+38+))~~ (39) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

~~((+39+))~~ (40) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

~~((+40+))~~ (41) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

~~((+41+))~~ (42) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

~~((+42+))~~ (43) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

~~((+43+))~~ (44) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

~~((+44+))~~ (45) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

(ix) Assault of a child in the second degree;

(x) Extortion in the first degree;

(xi) Robbery in the second degree;  
(xii) Drive-by shooting;  
(xiii) Vehicular assault; and  
(xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

~~((+45+))~~ (46) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.135.

~~((+46+))~~ (47) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.137 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

~~((+47+))~~ (48) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

**Sec. 302.** RCW 9.94A.715 and 2001 c 10 s 5 are each amended to read as follows:

(1) When a court sentences a person to the custody of the department for a sex offense not sentenced under section 303 of this act, a violent offense, any crime against persons under RCW 9.94A.440(2), or a felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to community custody for the community custody range established under RCW 9.94A.040 or up to the period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community custody shall begin: (a) Upon completion of the term of confinement; (b) at such time as the



1 offender is transferred to community custody in lieu of earned release  
2 in accordance with RCW 9.94A.150 (1) and (2); or (c) with regard to  
3 offenders sentenced under RCW 9.94A.660, upon failure to complete or  
4 administrative termination from the special drug offender sentencing  
5 alternative program.

6 (2)(a) Unless a condition is waived by the court, the conditions of  
7 community custody shall include those provided for in RCW 9.94A.700(4).  
8 The conditions may also include those provided for in RCW 9.94A.700(5).  
9 The court may also order the offender to participate in rehabilitative  
10 programs or otherwise perform affirmative conduct reasonably related to  
11 the circumstances of the offense, the offender's risk of reoffending,  
12 or the safety of the community, and the department shall enforce such  
13 conditions pursuant to subsection (6) of this section.

14 (b) As part of any sentence that includes a term of community  
15 custody imposed under this subsection, the court shall also require the  
16 offender to comply with any conditions imposed by the department under  
17 RCW 9.94A.720. The department shall assess the offender's risk of  
18 reoffense and may establish and modify additional conditions of the  
19 offender's community custody based upon the risk to community safety.  
20 In addition, the department may require the offender to participate in  
21 rehabilitative programs, or otherwise perform affirmative conduct, and  
22 to obey all laws.

23 (c) The department may not impose conditions that are contrary to  
24 those ordered by the court and may not contravene or decrease court  
25 imposed conditions. The department shall notify the offender in  
26 writing of any such conditions or modifications. In setting,  
27 modifying, and enforcing conditions of community custody, the  
28 department shall be deemed to be performing a quasi-judicial function.

29 (3) If an offender violates conditions imposed by the court or the  
30 department pursuant to this section during community custody, the  
31 department may transfer the offender to a more restrictive confinement  
32 status and impose other available sanctions as provided in RCW  
33 9.94A.205 and 9.94A.207.

34 (4) Except for terms of community custody under RCW 9.94A.670, the  
35 department shall discharge the offender from community custody on a  
36 date determined by the department, which the department may modify,  
37 based on risk and performance of the offender, within the range or at  
38 the end of the period of earned release, whichever is later.

1 (5) At any time prior to the completion or termination of a sex  
2 offender's term of community custody, if the court finds that public  
3 safety would be enhanced, the court may impose and enforce an order  
4 extending any or all of the conditions imposed pursuant to this section  
5 for a period up to the maximum allowable sentence for the crime as it  
6 is classified in chapter 9A.20 RCW, regardless of the expiration of the  
7 offender's term of community custody. If a violation of a condition  
8 extended under this subsection occurs after the expiration of the  
9 offender's term of community custody, it shall be deemed a violation of  
10 the sentence for the purposes of RCW 9.94A.195 and may be punishable as  
11 contempt of court as provided for in RCW 7.21.040. If the court  
12 extends a condition beyond the expiration of the term of community  
13 custody, the department is not responsible for supervision of the  
14 offender's compliance with the condition.

15 (6) Within the funds available for community custody, the  
16 department shall determine conditions and duration of community custody  
17 on the basis of risk to community safety, and shall supervise offenders  
18 during community custody on the basis of risk to community safety and  
19 conditions imposed by the court. The secretary shall adopt rules to  
20 implement the provisions of this subsection.

21 (7) By the close of the next business day after receiving notice of  
22 a condition imposed or modified by the department, an offender may  
23 request an administrative review under rules adopted by the department.  
24 The condition shall remain in effect unless the reviewing officer finds  
25 that it is not reasonably related to any of the following: (a) The  
26 crime of conviction; (b) the offender's risk of reoffending; or (c) the  
27 safety of the community.

28 NEW SECTION. Sec. 303. A new section is added to chapter 9.94A  
29 RCW to read as follows:

30 (1) An offender who is not a persistent offender shall be sentenced  
31 under this section if the offender:

32 (a) Is convicted of:

33 (i) Rape in the first degree, rape in the second degree, rape of a  
34 child in the first degree, child molestation in the first degree, rape  
35 of a child in the second degree, or indecent liberties by forcible  
36 compulsion;

37 (ii) Any of the following offenses with a finding of sexual  
38 motivation: Murder in the first degree, murder in the second degree,

1 homicide by abuse, kidnapping in the first degree, kidnapping in the  
2 second degree, assault in the first degree, assault in the second  
3 degree, assault of a child in the first degree, or burglary in the  
4 first degree; or

5 (iii) An attempt to commit any crime listed in this subsection  
6 (1)(a);

7 committed on or after the effective date of this section; or

8 (b) Has a prior conviction for an offense listed in RCW  
9 9.94A.030(32)(b), and is convicted of any sex offense which was  
10 committed after the effective date of this section.

11 For purposes of this subsection (1)(b), failure to register is not  
12 a sex offense.

13 (2) An offender convicted of rape of a child in the first or second  
14 degree or child molestation in the first degree who was seventeen years  
15 of age or younger at the time of the offense shall not be sentenced  
16 under this section.

17 (3) Upon a finding that the offender is subject to sentencing under  
18 this section, the court shall impose a sentence to a maximum term  
19 consisting of the statutory maximum sentence for the offense and a  
20 minimum term either within the standard sentence range for the offense,  
21 or outside the standard sentence range pursuant to RCW 9.94A.390, if  
22 the offender is otherwise eligible for such a sentence.

23 (4) A person sentenced under subsection (3) of this section shall  
24 serve the sentence in a facility or institution operated, or utilized  
25 under contract, by the state.

26 (5) When a court sentences a person to the custody of the  
27 department under this section, the court shall, in addition to the  
28 other terms of the sentence, sentence the offender to community custody  
29 under the supervision of the department and the authority of the board  
30 for any period of time the person is released from total confinement  
31 before the expiration of the maximum sentence.

32 (6)(a) Unless a condition is waived by the court, the conditions of  
33 community custody shall include those provided for in RCW 9.94A.700(4).  
34 The conditions may also include those provided for in RCW 9.94A.700(5).  
35 The court may also order the offender to participate in rehabilitative  
36 programs or otherwise perform affirmative conduct reasonably related to  
37 the circumstances of the offense, the offender's risk of reoffending,  
38 or the safety of the community, and the department and the board shall

1 enforce such conditions pursuant to sections 304, 307, and 308 of this  
2 act.

3 (b) As part of any sentence under this section, the court shall  
4 also require the offender to comply with any conditions imposed by the  
5 board under sections 304 and 306 through 309 of this act.

6 NEW SECTION. **Sec. 304.** A new section is added to chapter 9.94A  
7 RCW to read as follows:

8 (1) When an offender is sentenced under section 303 of this act,  
9 the department shall assess the offender's risk of recidivism and shall  
10 recommend to the board any additional or modified conditions of the  
11 offender's community custody based upon the risk to community safety.  
12 In addition, the department shall make a recommendation with regard to,  
13 and the board may require the offender to participate in,  
14 rehabilitative programs, or otherwise perform affirmative conduct, and  
15 obey all laws. The board must consider and may impose department-  
16 recommended conditions.

17 (2) The department may not recommend and the board may not impose  
18 conditions that are contrary to those ordered by the court and may not  
19 contravene or decrease court-imposed conditions. The board shall  
20 notify the offender in writing of any such conditions or modifications.

21 (3) In setting, modifying, and enforcing conditions of community  
22 custody, the department shall be deemed to be performing a quasi-  
23 judicial function.

24 (4) If an offender violates conditions imposed by the court, the  
25 department, or the board during community custody, the board or the  
26 department may transfer the offender to a more restrictive confinement  
27 status and impose other available sanctions as provided in section 309  
28 of this act.

29 (5) By the close of the next business day, after receiving notice  
30 of a condition imposed by the board or the department, an offender may  
31 request an administrative hearing under rules adopted by the board.  
32 The condition shall remain in effect unless the hearing examiner finds  
33 that it is not reasonably related to any of the following:

34 (a) The crime of conviction;

35 (b) The offender's risk of reoffending; or

36 (c) The safety of the community.

37 (6) An offender released by the board under section 306 of this act  
38 shall be subject to the supervision of the department until the

1 expiration of the maximum term of the sentence. The department shall  
2 monitor the offender's compliance with conditions of community custody  
3 imposed by the court, department, or board, and promptly report any  
4 violations to the board. Any violation of conditions of community  
5 custody established or modified by the board shall be subject to the  
6 provisions of sections 307 through 310 of this act.

7 (7) If the department finds that an emergency exists requiring the  
8 immediate imposition of conditions of release in addition to those set  
9 by the board under section 306 of this act and subsection (1) of this  
10 section in order to prevent the offender from committing a crime, the  
11 department may impose additional conditions. The department may not  
12 impose conditions that are contrary to those set by the board or the  
13 court and may not contravene or decrease court-imposed or board-imposed  
14 conditions. Conditions imposed under this subsection shall take effect  
15 immediately after notice to the offender by personal service, but shall  
16 not remain in effect longer than seven working days unless approved by  
17 the board under subsection (1) of this section within seven working  
18 days.

19 NEW SECTION. **Sec. 305.** A new section is added to chapter 72.09  
20 RCW to read as follows:

21 The department shall provide offenders sentenced under section 303  
22 of this act with the opportunity for sex offender treatment during  
23 incarceration.

24 NEW SECTION. **Sec. 306.** A new section is added to chapter 9.95 RCW  
25 to read as follows:

26 (1)(a) Before the expiration of the minimum term, as part of the  
27 end of sentence review process under RCW 72.09.340, 72.09.345, and  
28 where appropriate, 72.09.370, the department shall conduct, and the  
29 offender shall participate in, an examination of the offender,  
30 incorporating methodologies that are recognized by experts in the  
31 prediction of sexual dangerousness, and including a prediction of the  
32 probability that the offender will engage in sex offenses if released.

33 (b) The board may contract for an additional, independent  
34 examination, subject to the standards in this section.

35 (2) The board shall impose the conditions and instructions provided  
36 for in RCW 9.94A.720. The board shall consider the department's  
37 recommendations and may impose conditions in addition to those

recommended by the department. The board may impose or modify conditions of community custody following notice to the offender.

(3) No later than ninety days before expiration of the minimum term, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall conduct a hearing to determine whether it is more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board. The board may consider an offender's failure to participate in an evaluation under subsection (1) of this section in determining whether to release the offender. The board shall order the offender released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released. If the board does not order the offender released, the board shall establish a new minimum term, not to exceed an additional two years.

NEW SECTION. **Sec. 307.** A new section is added to chapter 9.95 RCW to read as follows:

(1) Whenever the board or a community corrections officer of this state has reason to believe an offender released under section 306 of this act has violated a condition of community custody or the laws of this state, any community corrections officer may arrest or cause the arrest and detention of the offender pending a determination by the board whether sanctions should be imposed or the offender's community custody should be revoked. The community corrections officer shall report all facts and circumstances surrounding the alleged violation to the board, with recommendations.

(2) If the board or the department causes the arrest or detention of an offender for a violation that does not amount to a new crime and the offender is arrested or detained by local law enforcement or in a local jail, the board or department, whichever caused the arrest or detention, shall be financially responsible for local costs. Jail bed costs shall be allocated at the rate established under RCW 9.94A.207(3).

NEW SECTION. **Sec. 308.** A new section is added to chapter 9.95 RCW to read as follows:

1 Any offender released under section 306 of this act who is arrested  
2 and detained in physical custody by the authority of a community  
3 corrections officer, or upon the written order of the board, shall not  
4 be released from custody on bail or personal recognizance, except upon  
5 approval of the board and the issuance by the board of an order  
6 reinstating the offender's release on the same or modified conditions.  
7 All chiefs of police, marshals of cities and towns, sheriffs of  
8 counties, and all police, prison, and peace officers and constables  
9 shall execute any such order in the same manner as any ordinary  
10 criminal process.

11 NEW SECTION. **Sec. 309.** A new section is added to chapter 9.95 RCW  
12 to read as follows:

13 (1) If an offender released by the board under section 306 of this  
14 act violates any condition or requirement of community custody, the  
15 board may transfer the offender to a more restrictive confinement  
16 status to serve up to the remaining portion of the sentence, less  
17 credit for any period actually spent in community custody or in  
18 detention awaiting disposition of an alleged violation and subject to  
19 the limitations of subsection (2) of this section.

20 (2) Following the hearing specified in subsection (3) of this  
21 section, the board may impose sanctions such as work release, home  
22 detention with electronic monitoring, work crew, community service,  
23 inpatient treatment, daily reporting, curfew, educational or counseling  
24 sessions, supervision enhanced through electronic monitoring, or any  
25 other sanctions available in the community, or may suspend or revoke  
26 the release to community custody whenever an offender released by the  
27 board under section 306 of this act violates any condition or  
28 requirement of community custody.

29 (3) If an offender released by the board under section 306 of this  
30 act is accused of violating any condition or requirement of community  
31 custody, he or she is entitled to a hearing before the board prior to  
32 the imposition of sanctions. The hearing shall be considered as  
33 offender disciplinary proceedings and shall not be subject to chapter  
34 34.05 RCW. The board shall develop hearing procedures and a structure  
35 of graduated sanctions consistent with the hearing procedures and  
36 graduated sanctions developed pursuant to RCW 9.94A.205. The board may  
37 suspend the offender's release to community custody and confine the  
38 offender in a correctional institution owned, operated by, or operated

1 under contract with the state prior to the hearing unless the offender  
2 has been arrested and confined for a new criminal offense.

3 (4) The hearing procedures required under subsection (3) of this  
4 section shall be developed by rule and include the following:

5 (a) Hearings shall be conducted by members of the board unless the  
6 board enters into an agreement with the department to use the hearing  
7 officers established under RCW 9.94A.205;

8 (b) The board shall provide the offender with written notice of the  
9 violation, the evidence relied upon, and the reasons the particular  
10 sanction was imposed. The notice shall include a statement of the  
11 rights specified in this subsection, and the offender's right to file  
12 a personal restraint petition under court rules after the final  
13 decision of the board;

14 (c) The hearing shall be held unless waived by the offender, and  
15 shall be electronically recorded. For offenders not in total  
16 confinement, the hearing shall be held within fifteen working days, but  
17 not less than twenty-four hours after notice of the violation. For  
18 offenders in total confinement, the hearing shall be held within five  
19 working days, but not less than twenty-four hours after notice of the  
20 violation;

21 (d) The offender shall have the right to: (i) Be present at the  
22 hearing; (ii) have the assistance of a person qualified to assist the  
23 offender in the hearing, appointed by the hearing examiner if the  
24 offender has a language or communications barrier; (iii) testify or  
25 remain silent; (iv) call witnesses and present documentary evidence;  
26 (v) question witnesses who appear and testify; and (vi) be represented  
27 by counsel if revocation of the release to community custody is a  
28 possible sanction for the violation; and

29 (e) The sanction shall take effect if affirmed by the hearing  
30 examiner. Within seven days after the hearing examiner's decision, the  
31 offender may appeal the decision to a panel of three reviewing  
32 examiners designated by the chair of the board or by the chair's  
33 designee. The sanction shall be reversed or modified if a majority of  
34 the panel finds that the sanction was not reasonably related to any of  
35 the following: (i) The crime of conviction; (ii) the violation  
36 committed; (iii) the offender's risk of reoffending; or (iv) the safety  
37 of the community.

38 (5) For purposes of this section, no finding of a violation of  
39 conditions may be based on unconfirmed or unconfirmable allegations.



1        NEW SECTION.   **Sec. 310.**   A new section is added to chapter 9.95 RCW  
2 to read as follows:

3        In the event the board suspends release status of an offender  
4 released under section 306 of this act by reason of an alleged  
5 violation of a condition of release, or pending disposition of a new  
6 criminal charge, the board may nullify the suspension order and  
7 reinstate release under previous conditions or any new conditions the  
8 board determines advisable. Before the board may nullify a suspension  
9 order and reinstate release, it shall determine that the best interests  
10 of society and the offender shall be served by such reinstatement  
11 rather than return to confinement.

12        **Sec. 311.**   RCW 9.94A.060 and 1996 c 232 s 3 are each amended to  
13 read as follows:

14        (1) The commission consists of twenty voting members, one of whom  
15 the governor shall designate as chairperson. With the exception of ex  
16 officio voting members, the voting members of the commission shall be  
17 appointed by the governor, subject to confirmation by the senate.

18        (2) The voting membership consists of the following:

19        (a) The head of the state agency having general responsibility for  
20 adult correction programs, as an ex officio member;

21        (b) The director of financial management or designee, as an ex  
22 officio member;

23        (c) (~~Until the indeterminate sentence review board ceases to exist~~  
24 ~~pursuant to RCW 9.95.0011,~~) The chair of the indeterminate sentence  
25 review board, as an ex officio member;

26        (d) The head of the state agency, or the agency head's designee,  
27 having responsibility for juvenile corrections programs, as an ex  
28 officio member;

29        (e) Two prosecuting attorneys;

30        (f) Two attorneys with particular expertise in defense work;

31        (g) Four persons who are superior court judges;

32        (h) One person who is the chief law enforcement officer of a county  
33 or city;

34        (i) Four members of the public who are not prosecutors, defense  
35 attorneys, judges, or law enforcement officers, one of whom is a victim  
36 of crime or a crime victims' advocate;

37        (j) One person who is an elected official of a county government,  
38 other than a prosecuting attorney or sheriff;

1 (k) One person who is an elected official of a city government;

2 (l) One person who is an administrator of juvenile court services.

3 In making the appointments, the governor shall endeavor to assure  
4 that the commission membership includes adequate representation and  
5 expertise relating to both the adult criminal justice system and the  
6 juvenile justice system. In making the appointments, the governor  
7 shall seek the recommendations of Washington prosecutors in respect to  
8 the prosecuting attorney members, of the Washington state bar  
9 association in respect to the defense attorney members, of the  
10 association of superior court judges in respect to the members who are  
11 judges, of the Washington association of sheriffs and police chiefs in  
12 respect to the member who is a law enforcement officer, of the  
13 Washington state association of counties in respect to the member who  
14 is a county official, of the association of Washington cities in  
15 respect to the member who is a city official, of the office of crime  
16 victims advocacy and other organizations of crime victims in respect to  
17 the member who is a victim of crime or a crime victims' advocate, and  
18 of the Washington association of juvenile court administrators in  
19 respect to the member who is an administrator of juvenile court  
20 services.

21 (3)(a) All voting members of the commission, except ex officio  
22 voting members, shall serve terms of three years and until their  
23 successors are appointed and confirmed.

24 (b) The governor shall stagger the terms of the members appointed  
25 under subsection (2)(j), (k), and (l) of this section by appointing one  
26 of them for a term of one year, one for a term of two years, and one  
27 for a term of three years.

28 (4) The speaker of the house of representatives and the president  
29 of the senate may each appoint two nonvoting members to the commission,  
30 one from each of the two largest caucuses in each house. The members  
31 so appointed shall serve two-year terms, or until they cease to be  
32 members of the house from which they were appointed, whichever occurs  
33 first.

34 (5) The members of the commission shall be reimbursed for travel  
35 expenses as provided in RCW 43.03.050 and 43.03.060. Legislative  
36 members shall be reimbursed by their respective houses as provided  
37 under RCW 44.04.120(~~(, as now existing or hereafter amended)~~). Members  
38 shall be compensated in accordance with RCW 43.03.250.

**Sec. 312.** RCW 9.94A.120 and 2001 c 10 s 2 are each amended to read as follows:

(1) When a person is convicted of a felony, the court shall impose punishment as provided in this chapter.

(2)(a) The court shall impose a sentence as provided in the following sections and as applicable in the case:

(i) Unless another term of confinement applies, the court shall impose a sentence within the standard sentence range established in RCW 9.94A.310;

(ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;

(iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;

(iv) RCW 9.94A.383, relating to community custody for offenders whose term of confinement is one year or less;

(v) RCW 9.94A.560, relating to persistent offenders;

(vi) RCW 9.94A.590, relating to mandatory minimum terms;

(vii) RCW 9.94A.650, relating to the first-time offender waiver;

(viii) RCW 9.94A.660, relating to the drug offender sentencing alternative;

(ix) RCW 9.94A.670, relating to the special sex offender sentencing alternative;

(x) Section 303 of this act, relating to certain sex offenses;

(xi) RCW 9.94A.390, relating to exceptional sentences;

~~((~~xi~~))~~ (xii) RCW 9.94A.400, relating to consecutive and concurrent sentences.

(b) If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community service work; until July 1, 2000, a term of community supervision not to exceed one year and on and after July 1, 2000, a term of community custody not to exceed one year, subject to conditions and sanctions as authorized in RCW 9.94A.710 (2) and (3); and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.390.

(3) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on

1 consecutive days. Local jail administrators may schedule court-ordered  
2 intermittent sentences as space permits.

3 (4) If a sentence imposed includes payment of a legal financial  
4 obligation, it shall be imposed as provided in RCW 9.94A.140,  
5 9.94A.142, and 9.94A.145.

6 (5) Except as provided under RCW 9.94A.140(4) and 9.94A.142(4), a  
7 court may not impose a sentence providing for a term of confinement or  
8 community supervision, community placement, or community custody which  
9 exceeds the statutory maximum for the crime as provided in chapter  
10 9A.20 RCW.

11 (6) The sentencing court shall give the offender credit for all  
12 confinement time served before the sentencing if that confinement was  
13 solely in regard to the offense for which the offender is being  
14 sentenced.

15 (7) The court shall order restitution as provided in RCW 9.94A.140  
16 and 9.94A.142.

17 (8) As a part of any sentence, the court may impose and enforce  
18 crime-related prohibitions and affirmative conditions as provided in  
19 this chapter.

20 (9) The court may order an offender whose sentence includes  
21 community placement or community supervision to undergo a mental status  
22 evaluation and to participate in available outpatient mental health  
23 treatment, if the court finds that reasonable grounds exist to believe  
24 that the offender is a mentally ill person as defined in RCW 71.24.025,  
25 and that this condition is likely to have influenced the offense. An  
26 order requiring mental status evaluation or treatment must be based on  
27 a presentence report and, if applicable, mental status evaluations that  
28 have been filed with the court to determine the offender's competency  
29 or eligibility for a defense of insanity. The court may order  
30 additional evaluations at a later date if deemed appropriate.

31 (10) In any sentence of partial confinement, the court may require  
32 the offender to serve the partial confinement in work release, in a  
33 program of home detention, on work crew, or in a combined program of  
34 work crew and home detention.

35 (11) In sentencing an offender convicted of a crime of domestic  
36 violence, as defined in RCW 10.99.020, if the offender has a minor  
37 child, or if the victim of the offense for which the offender was  
38 convicted has a minor child, the court may, as part of any term of  
39 community supervision, community placement, or community custody, order

1 the offender to participate in a domestic violence perpetrator program  
2 approved under RCW 26.50.150.

3 **Sec. 313.** RCW 9.94A.190 and 2000 c 28 s 4 are each amended to read  
4 as follows:

5 (1) A sentence that includes a term or terms of confinement  
6 totaling more than one year shall be served in a facility or  
7 institution operated, or utilized under contract, by the state. Except  
8 as provided in subsection (3) or (5) of this section, a sentence of not  
9 more than one year of confinement shall be served in a facility  
10 operated, licensed, or utilized under contract, by the county, or if  
11 home detention or work crew has been ordered by the court, in the  
12 residence of either the offender or a member of the offender's  
13 immediate family.

14 (2) If a county uses a state partial confinement facility for the  
15 partial confinement of a person sentenced to confinement for not more  
16 than one year, the county shall reimburse the state for the use of the  
17 facility as provided in this subsection. The office of financial  
18 management shall set the rate of reimbursement based upon the average  
19 per diem cost per offender in the facility. The office of financial  
20 management shall determine to what extent, if any, reimbursement shall  
21 be reduced or eliminated because of funds provided by the legislature  
22 to the department for the purpose of covering the cost of county use of  
23 state partial confinement facilities. The office of financial  
24 management shall reestablish reimbursement rates each even-numbered  
25 year.

26 (3) A person who is sentenced for a felony to a term of not more  
27 than one year, and who is committed or returned to incarceration in a  
28 state facility on another felony conviction, either under the  
29 indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter  
30 shall serve all terms of confinement, including a sentence of not more  
31 than one year, in a facility or institution operated, or utilized under  
32 contract, by the state, consistent with the provisions of RCW  
33 9.94A.400.

34 (4) Notwithstanding any other provision of this section, a sentence  
35 imposed pursuant to RCW 9.94A.660 which has a standard sentence range  
36 of over one year, regardless of length, shall be served in a facility  
37 or institution operated, or utilized under contract, by the state.

1       (5) Sentences imposed pursuant to section 303 of this act shall be  
2 served in a facility or institution operated, or utilized under  
3 contract, by the state.

4       **Sec. 314.** RCW 9.94A.390 and 2000 c 28 s 8 are each amended to read  
5 as follows:

6       The court may impose a sentence outside the standard sentence range  
7 for an offense if it finds, considering the purpose of this chapter,  
8 that there are substantial and compelling reasons justifying an  
9 exceptional sentence. Whenever a sentence outside the standard  
10 sentence range is imposed, the court shall set forth the reasons for  
11 its decision in written findings of fact and conclusions of law. A  
12 sentence outside the standard sentence range shall be a determinate  
13 sentence unless it is imposed on an offender sentenced under section  
14 303 of this act. An exceptional sentence imposed on an offender  
15 sentenced under section 303 of this act shall be to a minimum term set  
16 by the court and a maximum term equal to the statutory maximum sentence  
17 for the offense of conviction under chapter 9A.20 RCW.

18       If the sentencing court finds that an exceptional sentence outside  
19 the standard sentence range should be imposed, the sentence is subject  
20 to review only as provided for in RCW 9.94A.210(4).

21       A departure from the standards in RCW 9.94A.400 (1) and (2)  
22 governing whether sentences are to be served consecutively or  
23 concurrently is an exceptional sentence subject to the limitations in  
24 this section, and may be appealed by the offender or the state as set  
25 forth in RCW 9.94A.210 (2) through (6).

26       The following are illustrative factors which the court may consider  
27 in the exercise of its discretion to impose an exceptional sentence.  
28 The following are illustrative only and are not intended to be  
29 exclusive reasons for exceptional sentences.

30       (1) Mitigating Circumstances

31       (a) To a significant degree, the victim was an initiator, willing  
32 participant, aggressor, or provoker of the incident.

33       (b) Before detection, the defendant compensated, or made a good  
34 faith effort to compensate, the victim of the criminal conduct for any  
35 damage or injury sustained.

36       (c) The defendant committed the crime under duress, coercion,  
37 threat, or compulsion insufficient to constitute a complete defense but  
38 which significantly affected his or her conduct.

1 (d) The defendant, with no apparent predisposition to do so, was  
2 induced by others to participate in the crime.

3 (e) The defendant's capacity to appreciate the wrongfulness of his  
4 or her conduct, or to conform his or her conduct to the requirements of  
5 the law, was significantly impaired. Voluntary use of drugs or alcohol  
6 is excluded.

7 (f) The offense was principally accomplished by another person and  
8 the defendant manifested extreme caution or sincere concern for the  
9 safety or well-being of the victim.

10 (g) The operation of the multiple offense policy of RCW 9.94A.400  
11 results in a presumptive sentence that is clearly excessive in light of  
12 the purpose of this chapter, as expressed in RCW 9.94A.010.

13 (h) The defendant or the defendant's children suffered a continuing  
14 pattern of physical or sexual abuse by the victim of the offense and  
15 the offense is a response to that abuse.

16 (2) Aggravating Circumstances

17 (a) The defendant's conduct during the commission of the current  
18 offense manifested deliberate cruelty to the victim.

19 (b) The defendant knew or should have known that the victim of the  
20 current offense was particularly vulnerable or incapable of resistance  
21 due to extreme youth, advanced age, disability, or ill health.

22 (c) The current offense was a violent offense, and the defendant  
23 knew that the victim of the current offense was pregnant.

24 (d) The current offense was a major economic offense or series of  
25 offenses, so identified by a consideration of any of the following  
26 factors:

27 (i) The current offense involved multiple victims or multiple  
28 incidents per victim;

29 (ii) The current offense involved attempted or actual monetary loss  
30 substantially greater than typical for the offense;

31 (iii) The current offense involved a high degree of sophistication  
32 or planning or occurred over a lengthy period of time; or

33 (iv) The defendant used his or her position of trust, confidence,  
34 or fiduciary responsibility to facilitate the commission of the current  
35 offense.

36 (e) The current offense was a major violation of the Uniform  
37 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to  
38 trafficking in controlled substances, which was more onerous than the

1 typical offense of its statutory definition: The presence of ANY of  
2 the following may identify a current offense as a major VUCSA:

3 (i) The current offense involved at least three separate  
4 transactions in which controlled substances were sold, transferred, or  
5 possessed with intent to do so;

6 (ii) The current offense involved an attempted or actual sale or  
7 transfer of controlled substances in quantities substantially larger  
8 than for personal use;

9 (iii) The current offense involved the manufacture of controlled  
10 substances for use by other parties;

11 (iv) The circumstances of the current offense reveal the offender  
12 to have occupied a high position in the drug distribution hierarchy;

13 (v) The current offense involved a high degree of sophistication or  
14 planning, occurred over a lengthy period of time, or involved a broad  
15 geographic area of disbursement; or

16 (vi) The offender used his or her position or status to facilitate  
17 the commission of the current offense, including positions of trust,  
18 confidence or fiduciary responsibility (e.g., pharmacist, physician, or  
19 other medical professional).

20 (f) The current offense included a finding of sexual motivation  
21 pursuant to RCW 9.94A.127.

22 (g) The offense was part of an ongoing pattern of sexual abuse of  
23 the same victim under the age of eighteen years manifested by multiple  
24 incidents over a prolonged period of time.

25 (h) The current offense involved domestic violence, as defined in  
26 RCW 10.99.020, and one or more of the following was present:

27 (i) The offense was part of an ongoing pattern of psychological,  
28 physical, or sexual abuse of the victim manifested by multiple  
29 incidents over a prolonged period of time;

30 (ii) The offense occurred within sight or sound of the victim's or  
31 the offender's minor children under the age of eighteen years; or

32 (iii) The offender's conduct during the commission of the current  
33 offense manifested deliberate cruelty or intimidation of the victim.

34 (i) The operation of the multiple offense policy of RCW 9.94A.400  
35 results in a presumptive sentence that is clearly too lenient in light  
36 of the purpose of this chapter, as expressed in RCW 9.94A.010.

37 (j) The defendant's prior unscored misdemeanor or prior unscored  
38 foreign criminal history results in a presumptive sentence that is



1 clearly too lenient in light of the purpose of this chapter, as  
2 expressed in RCW 9.94A.010.

3 (k) The offense resulted in the pregnancy of a child victim of  
4 rape.

5 (l) The defendant knew that the victim of the current offense was  
6 a youth who was not residing with a legal custodian and the defendant  
7 established or promoted the relationship for the primary purpose of  
8 victimization.

9 **Sec. 315.** RCW 9.94A.590 and 2000 c 28 s 7 are each amended to read  
10 as follows:

11 (1) The following minimum terms of total confinement are mandatory  
12 and shall not be varied or modified under RCW 9.94A.390:

13 (a) An offender convicted of the crime of murder in the first  
14 degree shall be sentenced to a term of total confinement not less than  
15 twenty years.

16 (b) An offender convicted of the crime of assault in the first  
17 degree or assault of a child in the first degree where the offender  
18 used force or means likely to result in death or intended to kill the  
19 victim shall be sentenced to a term of total confinement not less than  
20 five years.

21 (c) An offender convicted of the crime of rape in the first degree  
22 shall be sentenced to a term of total confinement not less than five  
23 years.

24 (d) An offender convicted of the crime of sexually violent predator  
25 escape shall be sentenced to a minimum term of total confinement not  
26 less than sixty months.

27 (2) During such minimum terms of total confinement, no offender  
28 subject to the provisions of this section is eligible for community  
29 custody, earned release time, furlough, home detention, partial  
30 confinement, work crew, work release, or any other form of early  
31 release authorized under RCW 9.94A.150, or any other form of authorized  
32 leave of absence from the correctional facility while not in the direct  
33 custody of a corrections officer. The provisions of this subsection  
34 shall not apply: (a) In the case of an offender in need of emergency  
35 medical treatment; (b) for the purpose of commitment to an inpatient  
36 treatment facility in the case of an offender convicted of the crime of  
37 rape in the first degree; or (c) for an extraordinary medical placement  
38 when authorized under RCW 9.94A.150(4).

**Sec. 316.** RCW 9.94A.670 and 2000 c 28 s 20 are each amended to read as follows:

(1) Unless the context clearly requires otherwise, the definitions in this subsection apply to this section only.

(a) "Sex offender treatment provider" or "treatment provider" means a certified sex offender treatment provider as defined in RCW 18.155.020.

(b) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(2) An offender is eligible for the special sex offender sentencing alternative if:

(a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense;

(b) The offender has no prior convictions for a sex offense as defined in RCW 9.94A.030 or any other felony sex offenses in this or any other state; and

(c) The offender's standard sentence range for the offense includes the possibility of confinement for less than eleven years.

(3) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the offender, may order an examination to determine whether the offender is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The offender's version of the facts and the official version of the facts;

(ii) The offender's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The offender's social and employment situation; and

(v) Other evaluation measures used.

The report shall set forth the sources of the examiner's information.

(b) The examiner shall assess and report regarding the offender's amenability to treatment and relative risk to the community. A

1 proposed treatment plan shall be provided and shall include, at a  
2 minimum:

3 (i) Frequency and type of contact between offender and therapist;

4 (ii) Specific issues to be addressed in the treatment and  
5 description of planned treatment modalities;

6 (iii) Monitoring plans, including any requirements regarding living  
7 conditions, lifestyle requirements, and monitoring by family members  
8 and others;

9 (iv) Anticipated length of treatment; and

10 (v) Recommended crime-related prohibitions.

11 (c) The court on its own motion may order, or on a motion by the  
12 state shall order, a second examination regarding the offender's  
13 amenability to treatment. The examiner shall be selected by the party  
14 making the motion. The offender shall pay the cost of any second  
15 examination ordered unless the court finds the defendant to be indigent  
16 in which case the state shall pay the cost.

17 (4) After receipt of the reports, the court shall consider whether  
18 the offender and the community will benefit from use of this  
19 alternative and consider the victim's opinion whether the offender  
20 should receive a treatment disposition under this section. If the  
21 court determines that this alternative is appropriate, the court shall  
22 then impose a sentence or, pursuant to section 303 of this act, a  
23 minimum term of sentence, within the standard sentence range. If the  
24 sentence imposed is less (~~then~~ ~~[than]~~) than eleven years of  
25 confinement, the court may suspend the execution of the sentence and  
26 impose the following conditions of suspension:

27 (a) The court shall place the offender on community custody for the  
28 length of the suspended sentence, the length of the maximum term  
29 imposed pursuant to section 303 of this act, or three years, whichever  
30 is greater, and require the offender to comply with any conditions  
31 imposed by the department under RCW 9.94A.720.

32 (b) The court shall order treatment for any period up to three  
33 years in duration. The court, in its discretion, shall order  
34 outpatient sex offender treatment or inpatient sex offender treatment,  
35 if available. A community mental health center may not be used for  
36 such treatment unless it has an appropriate program designed for sex  
37 offender treatment. The offender shall not change sex offender  
38 treatment providers or treatment conditions without first notifying the  
39 prosecutor, the community corrections officer, and the court. If any

1 party or the court objects to a proposed change, the offender shall not  
2 change providers or conditions without court approval after a hearing.

3 (5) As conditions of the suspended sentence, the court may impose  
4 one or more of the following:

5 (a) Up to six months of confinement, not to exceed the sentence  
6 range of confinement for that offense;

7 (b) Crime-related prohibitions;

8 (c) Require the offender to devote time to a specific employment or  
9 occupation;

10 (d) Remain within prescribed geographical boundaries and notify the  
11 court or the community corrections officer prior to any change in the  
12 offender's address or employment;

13 (e) Report as directed to the court and a community corrections  
14 officer;

15 (f) Pay all court-ordered legal financial obligations as provided  
16 in RCW 9.94A.030;

17 (g) Perform community service work; or

18 (h) Reimburse the victim for the cost of any counseling required as  
19 a result of the offender's crime.

20 (6) At the time of sentencing, the court shall set a treatment  
21 termination hearing for three months prior to the anticipated date for  
22 completion of treatment.

23 (7) The sex offender treatment provider shall submit quarterly  
24 reports on the offender's progress in treatment to the court and the  
25 parties. The report shall reference the treatment plan and include at  
26 a minimum the following: Dates of attendance, offender's compliance  
27 with requirements, treatment activities, the offender's relative  
28 progress in treatment, and any other material specified by the court at  
29 sentencing.

30 (8) Prior to the treatment termination hearing, the treatment  
31 provider and community corrections officer shall submit written reports  
32 to the court and parties regarding the offender's compliance with  
33 treatment and monitoring requirements, and recommendations regarding  
34 termination from treatment, including proposed community custody  
35 conditions. Either party may request, and the court may order, another  
36 evaluation regarding the advisability of termination from treatment.  
37 The offender shall pay the cost of any additional evaluation ordered  
38 unless the court finds the offender to be indigent in which case the  
39 state shall pay the cost. At the treatment termination hearing the

1 court may: (a) Modify conditions of community custody, and either (b)  
2 terminate treatment, or (c) extend treatment for up to the remaining  
3 period of community custody.

4 (9) If a violation of conditions occurs during community custody,  
5 the department shall either impose sanctions as provided for in RCW  
6 9.94A.205(2)(a) or refer the violation to the court and recommend  
7 revocation of the suspended sentence as provided for in subsections (6)  
8 and (8) of this section.

9 (10) The court may revoke the suspended sentence at any time during  
10 the period of community custody and order execution of the sentence if:  
11 (a) The offender violates the conditions of the suspended sentence, or  
12 (b) the court finds that the offender is failing to make satisfactory  
13 progress in treatment. All confinement time served during the period  
14 of community custody shall be credited to the offender if the suspended  
15 sentence is revoked.

16 (11) Examinations and treatment ordered pursuant to this subsection  
17 shall only be conducted by sex offender treatment providers certified  
18 by the department of health pursuant to chapter 18.155 RCW unless the  
19 court finds that:

20 (a) The offender has already moved to another state or plans to  
21 move to another state for reasons other than circumventing the  
22 certification requirements; or

23 (b)(i) No certified providers are available for treatment within a  
24 reasonable geographical distance of the offender's home; and

25 (ii) The evaluation and treatment plan comply with this section and  
26 the rules adopted by the department of health.

27 (12) If the offender is less than eighteen years of age when the  
28 charge is filed, the state shall pay for the cost of initial evaluation  
29 and treatment.

30 NEW SECTION. Sec. 317. A new section is added to chapter 9.95 RCW  
31 to read as follows:

32 (1) "Board" means the indeterminate sentence review board.

33 (2) "Community custody" means that portion of an offender's  
34 sentence subject to controls including crime-related prohibitions and  
35 affirmative conditions from the court, the board, or the department of  
36 corrections based on risk to community safety, that is served under  
37 supervision in the community, and which may be modified or revoked for  
38 violations of release conditions.

(3) "Crime-related prohibition" has the meaning defined in RCW 9.94A.030.

(4) "Department" means the department of corrections.

(5) "Parole" means that portion of a person's sentence for a crime committed before July 1, 1984, served on conditional release in the community subject to board controls and revocation and under supervision of the department.

(6) "Secretary" means the secretary of the department of corrections or his or her designee.

**Sec. 318.** RCW 9.95.005 and 1986 c 224 s 4 are each amended to read as follows:

The board shall meet at ~~((the penitentiary and the reformatory))~~ major state correctional institutions at such times as may be necessary for a full and complete study of the cases of all convicted persons whose durations of confinement are to be determined by it ~~((or))~~; whose community custody supervision is under the board's authority; or whose applications for parole come before it. Other times and places of meetings may also be fixed by the board.

The superintendents of the different institutions shall provide suitable quarters for the board and assistants while in the discharge of their duties.

**Sec. 319.** RCW 9.95.010 and 1955 c 133 s 2 are each amended to read as follows:

When a person, whose crime was committed before July 1, 1984, is convicted of any felony, except treason, murder in the first degree, or carnal knowledge of a child under ten years, and a new trial is not granted, the court shall sentence such person to the penitentiary, or, if the law allows and the court sees fit to exercise such discretion, to the reformatory, and shall fix the maximum term of such person's sentence only.

The maximum term to be fixed by the court shall be the maximum provided by law for the crime of which such person was convicted, if the law provides for a maximum term. If the law does not provide a maximum term for the crime of which such person was convicted the court shall fix such maximum term, which may be for any number of years up to and including life imprisonment but in any case where the maximum term is fixed by the court it shall be fixed at not less than twenty years.

1       **Sec. 320.** RCW 9.95.011 and 1993 c 144 s 3 are each amended to read  
2 as follows:

3       (1) When the court commits a convicted person to the department of  
4 corrections on or after July 1, 1986, for an offense committed before  
5 July 1, 1984, the court shall, at the time of sentencing or revocation  
6 of probation, fix the minimum term. The term so fixed shall not exceed  
7 the maximum sentence provided by law for the offense of which the  
8 person is convicted.

9       The court shall attempt to set the minimum term reasonably  
10 consistent with the purposes, standards, and sentencing ranges adopted  
11 under RCW 9.94A.040, but the court is subject to the same limitations  
12 as those placed on the board under RCW 9.92.090, 9.95.040 (1) through  
13 (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The  
14 court's minimum term decision is subject to review to the same extent  
15 as a minimum term decision by the parole board before July 1, 1986.

16       Thereafter, the expiration of the minimum term set by the court  
17 minus any time credits earned under RCW 9.95.070 and 9.95.110  
18 constitutes the parole eligibility review date, at which time the board  
19 may consider the convicted person for parole under RCW 9.95.100 and  
20 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the  
21 board's authority to reduce or increase the minimum term, once set by  
22 the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080,  
23 9.95.100, 9.95.115, 9.95.125, or 9.95.047.

24       (2) Not less than ninety days prior to the expiration of the  
25 minimum term of a person sentenced under section 303 of this act, for  
26 a sex offense committed on or after July 1, 2001, less any time credits  
27 permitted by statute, the board shall review the person for conditional  
28 release to community custody as provided in section 306 of this act.  
29 If the board does not release the person, it shall set a new minimum  
30 term not to exceed an additional two years. The board shall review the  
31 person again not less than ninety days prior to the expiration of the  
32 new minimum term.

33       **Sec. 321.** RCW 9.95.017 and 1986 c 224 s 11 are each amended to  
34 read as follows:

35       (1) The board shall cause to be prepared criteria for duration of  
36 confinement, release on parole, and length of parole for persons  
37 committed to prison for crimes committed before July 1, 1984.

1 The proposed criteria should take into consideration RCW  
2 9.95.009(2). Before submission to the governor, the board shall  
3 solicit comments and review on their proposed criteria for parole  
4 release. These proposed criteria shall be submitted for consideration  
5 by the 1987 legislature.

6 (2) Persons committed to the department of corrections and who are  
7 under the authority of the board for crimes committed on or after July  
8 1, 2001, are subject to the provisions for duration of confinement,  
9 release to community custody, and length of community custody  
10 established in sections 303 through 310 of this act.

11 **Sec. 322.** RCW 9.95.020 and 1955 c 133 s 3 are each amended to read  
12 as follows:

13 If the sentence of a person so convicted is not suspended by the  
14 court, the superintendent of (~~the penitentiary or the superintendent~~  
15 ~~of the reformatory~~) a major state correctional institution shall  
16 receive such person, if committed to his or her institution, and  
17 imprison (~~him~~) the person until released under the provisions of this  
18 chapter, under section 306 of this act, upon the completion of the  
19 statutory maximum sentence, or through the action of the governor.

20 **Sec. 323.** RCW 9.95.032 and 1984 c 114 s 3 are each amended to read  
21 as follows:

22 Such statement shall be signed by the prosecuting attorney and  
23 approved by the judge by whom the judgment was rendered and shall be  
24 delivered to the sheriff, traveling guard, department of corrections  
25 personnel, or other officer executing the sentence, and a copy of such  
26 statement shall be furnished to the defendant or his or her attorney.  
27 Such officer shall deliver the statement, at the time of the prisoner's  
28 commitment, to the superintendent of the institution to which such  
29 prisoner has been (~~sentenced and~~) committed. The superintendent  
30 shall make such statement available for use by the board (~~of prison~~  
31 ~~terms and paroles~~)).

32 **Sec. 324.** RCW 9.95.052 and 1986 c 224 s 10 are each amended to  
33 read as follows:

34 At any time after the board (or the court after July 1, 1986) has  
35 determined the minimum term of confinement of any person subject to  
36 confinement in a state correctional institution for a crime committed



1 before July 1, 1984, the board may request the superintendent of such  
2 correctional institution to conduct a full review of such person's  
3 prospects for rehabilitation and report to the board the facts of such  
4 review and the resulting findings. Upon the basis of such report and  
5 such other information and investigation that the board deems  
6 appropriate, the board may redetermine and refix such convicted  
7 person's minimum term of confinement whether the term was set by the  
8 board or the court.

9 The board shall not reduce a person's minimum term of confinement  
10 unless the board has received from the department of corrections all  
11 institutional conduct reports relating to the person.

12 **Sec. 325.** RCW 9.95.055 and 1992 c 7 s 25 are each amended to read  
13 as follows:

14 The indeterminate sentence review board is hereby granted  
15 authority, in the event of a declaration by the governor that a war  
16 emergency exists, including a general mobilization, and for the  
17 duration thereof only, to reduce downward the minimum term, as set by  
18 the board, of any inmate under the jurisdiction of the board confined  
19 in a state correctional facility, who will be accepted by and inducted  
20 into the armed services: PROVIDED, That a reduction downward shall not  
21 be made under this section for those inmates who are confined for  
22 treason, murder in the first degree or carnal knowledge of a female  
23 child under ten years: AND PROVIDED FURTHER, That no such inmate shall  
24 be released under this section who is ~~((found to be a sexual psychopath~~  
25 ~~under the provisions of and as defined by chapter 71.12 RCW))~~ being  
26 considered for civil commitment as a sexually violent predator under  
27 chapter 71.09 RCW or was sentenced under section 303 of this act for a  
28 crime committed on or after July 1, 2001.

29 **Sec. 326.** RCW 9.95.064 and 1989 c 276 s 4 are each amended to read  
30 as follows:

31 (1) In order to minimize the trauma to the victim, the court may  
32 attach conditions on release of ~~((a defendant))~~ an offender under RCW  
33 9.95.062, convicted of a crime committed before July 1, 1984, regarding  
34 the whereabouts of the defendant, contact with the victim, or other  
35 conditions.

36 (2) Offenders released under section 306 of this act are subject to  
37 crime-related prohibitions and affirmative conditions established by

1 the court, the department of corrections, or the board pursuant to RCW  
2 9.94A.715 and sections 303 through 310 of this act.

3       **Sec. 327.** RCW 9.95.070 and 1999 c 143 s 19 are each amended to  
4 read as follows:

5       (1) Every prisoner, convicted of a crime committed before July 1,  
6 1984, who has a favorable record of conduct at the penitentiary or the  
7 reformatory, and who performs in a faithful, diligent, industrious,  
8 orderly and peaceable manner the work, duties, and tasks assigned to  
9 him or her to the satisfaction of the superintendent of the  
10 penitentiary or reformatory, and in whose behalf the superintendent of  
11 the penitentiary or reformatory files a report certifying that his or  
12 her conduct and work have been meritorious and recommending allowance  
13 of time credits to him or her, shall upon, but not until, the adoption  
14 of such recommendation by the indeterminate sentence review board, be  
15 allowed time credit reductions from the term of imprisonment fixed by  
16 the board.

17       (2) Offenders sentenced under section 303 of this act for a crime  
18 committed on or after July 1, 2001, are subject to the earned release  
19 provisions for sex offenders established in RCW 9.94A.150.

20       **Sec. 328.** RCW 9.95.080 and 1992 c 7 s 26 are each amended to read  
21 as follows:

22       In case any (~~convicted~~) person convicted of a crime committed  
23 before July 1, 1984, and under the jurisdiction of the indeterminate  
24 sentence review board undergoing sentence in a state correctional  
25 (~~facility~~) institution commits any infractions of the rules and  
26 regulations of the institution, the board may revoke any order  
27 theretofore made determining the length of time such convicted person  
28 shall be imprisoned, including the forfeiture of all or a portion of  
29 credits earned or to be earned, pursuant to the provisions of RCW  
30 9.95.110, and make a new order determining the length of time the  
31 person shall serve, not exceeding the maximum penalty provided by law  
32 for the crime for which the person was convicted, or the maximum fixed  
33 by the court. Such revocation and redetermination shall not be had  
34 except upon a hearing before the indeterminate sentence review board.  
35 At such hearing the convicted person shall be present and entitled to  
36 be heard and may present evidence and witnesses in his or her behalf.

1       **Sec. 329.** RCW 9.95.090 and 1999 c 143 s 20 are each amended to  
2 read as follows:

3       (1) The board shall require of every able bodied (~~((convicted person~~  
4 ~~imprisoned in the penitentiary or the reformatory))~~ offender confined  
5 in a state correctional institution for a crime committed before July  
6 1, 1984, as many hours of faithful labor in each and every day during  
7 his or her term of imprisonment as shall be prescribed by the rules and  
8 regulations of the institution in which he or she is confined.

9       (2) Offenders sentenced under section 303 of this act for crimes  
10 committed on or after July 1, 2001, shall perform work or other  
11 programming as required by the department of corrections during their  
12 term of confinement.

13       **Sec. 330.** RCW 9.95.100 and 1955 c 133 s 11 are each amended to  
14 read as follows:

15       Any (~~((convicted))~~) person convicted of a felony committed before  
16 July 1, 1984, and undergoing sentence in ((the penitentiary or the  
17 ~~reformatory))~~ a state correctional institution, not sooner released  
18 under the provisions of this chapter, shall, in accordance with the  
19 provisions of law, be discharged from custody on serving the maximum  
20 punishment provided by law for the offense of which such person was  
21 convicted, or the maximum term fixed by the court where the law does  
22 not provide for a maximum term. The board shall not, however, until  
23 his or her maximum term expires, release a prisoner, unless in its  
24 opinion his or her rehabilitation has been complete and he or she is a  
25 fit subject for release.

26       **Sec. 331.** RCW 9.95.110 and 1999 c 143 s 21 are each amended to  
27 read as follows:

28       (1) The board may permit (~~((a convicted person))~~) an offender  
29 convicted of a crime committed before July 1, 1984, to leave the  
30 buildings and enclosures of ((the penitentiary or the reformatory)) a  
31 state correctional institution on parole, after such convicted person  
32 has served the period of confinement fixed for him or her by the board,  
33 less time credits for good behavior and diligence in work: PROVIDED,  
34 That in no case shall an inmate be credited with more than one-third of  
35 his or her sentence as fixed by the board.

36       The board may establish rules and regulations under which (~~((a~~  
37 ~~convicted person))~~) an offender may be allowed to leave the confines of

1 (~~((the penitentiary or the reformatory))~~) a state correctional  
2 institution on parole, and may return such person to the confines of  
3 the institution from which he or she was paroled, at its discretion.

4 (2) The board may permit an offender convicted of a crime committed  
5 on or after July 1, 2001, and sentenced under section 303 of this act,  
6 to leave a state correctional institution on community custody  
7 according to the provisions of sections 303 through 310 of this act.  
8 The person may be returned to the institution following a violation of  
9 his or her conditions of release to community custody pursuant to the  
10 hearing provisions of section 309 of this act.

11 **Sec. 332.** RCW 9.95.115 and 1989 c 259 s 3 are each amended to read  
12 as follows:

13 The indeterminate sentence review board is hereby granted authority  
14 to parole any person sentenced to the custody of the department of  
15 corrections, under a mandatory life sentence for a crime committed  
16 (~~((prior to))~~) before July 1, 1984, except those persons sentenced to  
17 life without the possibility of parole. No such person shall be  
18 granted parole unless the person has been continuously confined therein  
19 for a period of twenty consecutive years less earned good time:  
20 PROVIDED, That no such person shall be released under parole who is  
21 (~~((found to be a sexual psychopath under the provisions of and as~~  
22 ~~defined by chapter 71.06 RCW))~~) subject to civil commitment as a  
23 sexually violent predator under chapter 71.09 RCW.

24 **Sec. 333.** RCW 9.95.120 and 1999 c 143 s 22 are each amended to  
25 read as follows:

26 Whenever the board or a (~~((probation and parole))~~) community  
27 corrections officer of this state has reason to believe a (~~((convicted))~~)  
28 person convicted of a crime committed before July 1, 1984, has breached  
29 a condition of his or her parole or violated the law of any state where  
30 he or she may then be or the rules and regulations of the board, any  
31 (~~((probation and parole))~~) community corrections officer of this state  
32 may arrest or cause the arrest and detention and suspension of parole  
33 of such convicted person pending a determination by the board whether  
34 the parole of such convicted person shall be revoked. All facts and  
35 circumstances surrounding the violation by such convicted person shall  
36 be reported to the board by the (~~((probation and parole))~~) community  
37 corrections officer, with recommendations. The board, after

1 consultation with the secretary of corrections, shall make all rules  
2 and regulations concerning procedural matters, which shall include the  
3 time when state (~~((probation and parole))~~) community corrections officers  
4 shall file with the board reports required by this section, procedures  
5 pertaining thereto and the filing of such information as may be  
6 necessary to enable the board to perform its functions under this  
7 section. On the basis of the report by the (~~((probation and parole))~~)  
8 community corrections officer, or at any time upon its own discretion,  
9 the board may revise or modify the conditions of parole or order the  
10 suspension of parole by the issuance of a written order bearing its  
11 seal, which order shall be sufficient warrant for all peace officers to  
12 take into custody any convicted person who may be on parole and retain  
13 such person in their custody until arrangements can be made by the  
14 board for his or her return to a state correctional institution for  
15 convicted felons. Any such revision or modification of the conditions  
16 of parole or the order suspending parole shall be personally served  
17 upon the parolee.

18 Any parolee arrested and detained in physical custody by the  
19 authority of a state (~~((probation and parole))~~) community corrections  
20 officer, or upon the written order of the board, shall not be released  
21 from custody on bail or personal recognizance, except upon approval of  
22 the board and the issuance by the board of an order of reinstatement on  
23 parole on the same or modified conditions of parole.

24 All chiefs of police, marshals of cities and towns, sheriffs of  
25 counties, and all police, prison, and peace officers and constables  
26 shall execute any such order in the same manner as any ordinary  
27 criminal process.

28 Whenever a paroled prisoner is accused of a violation of his or her  
29 parole, other than the commission of, and conviction for, a felony or  
30 misdemeanor under the laws of this state or the laws of any state where  
31 he or she may then be, he or she shall be entitled to a fair and  
32 impartial hearing of such charges within thirty days from the time that  
33 he or she is served with charges of the violation of conditions of  
34 (~~((his))~~) parole after his or her arrest and detention. The hearing  
35 shall be held before one or more members of the board at a place or  
36 places, within this state, reasonably near the site of the alleged  
37 violation or violations of parole.

38 In the event that the board suspends a parole by reason of an  
39 alleged parole violation or in the event that a parole is suspended

1 pending the disposition of a new criminal charge, the board shall have  
2 the power to nullify the order of suspension and reinstate the  
3 individual to parole under previous conditions or any new conditions  
4 that the board may determine advisable. Before the board shall nullify  
5 an order of suspension and reinstate a parole they shall have  
6 determined that the best interests of society and the individual shall  
7 best be served by such reinstatement rather than a return to a penal  
8 institution.

9       **Sec. 334.** RCW 9.95.121 and 1981 c 136 s 38 are each amended to  
10 read as follows:

11       (1) For offenders convicted of crimes committed before July 1,  
12 1984, within fifteen days from the date of notice to the department of  
13 corrections of the arrest and detention of the alleged parole violator,  
14 he or she shall be personally served by a state ((probation and  
15 parole)) community corrections officer with a copy of the factual  
16 allegations of the violation of the conditions of parole, and, at the  
17 same time shall be advised of his or her right to an on-site parole  
18 revocation hearing and of his or her rights and privileges as provided  
19 in RCW 9.95.120 through 9.95.126. The alleged parole violator, after  
20 service of the allegations of violations of the conditions of parole  
21 and the advice of rights may waive the on-site parole revocation  
22 hearing as provided in RCW 9.95.120, and admit one or more of the  
23 alleged violations of the conditions of parole. If the board accepts  
24 the waiver it shall either, (1) reinstate the parolee on parole under  
25 the same or modified conditions, or (2) revoke the parole of the  
26 parolee and enter an order of parole revocation and return to state  
27 custody. A determination of a new minimum sentence shall be made  
28 within thirty days of return to state custody which shall not exceed  
29 the maximum sentence as provided by law for the crime of which the  
30 parolee was originally convicted or the maximum fixed by the court.

31       If the waiver made by the parolee is rejected by the board it shall  
32 hold an on-site parole revocation hearing under the provisions of RCW  
33 9.95.120 through 9.95.126.

34       (2) Offenders sentenced under section 303 of this act are subject  
35 to the violation hearing process established in section 309 of this  
36 act.

1       **Sec. 335.** RCW 9.95.122 and 1999 c 143 s 23 are each amended to  
2 read as follows:

3       (1) At any on-site parole revocation hearing for a person convicted  
4 of a crime committed before July 1, 1984, the alleged parole violator  
5 shall be entitled to be represented by an attorney of his or her own  
6 choosing and at his or her own expense, except, upon the presentation  
7 of satisfactory evidence of indigency and the request for the  
8 appointment of an attorney by the alleged parole violator, the board  
9 may cause the appointment of an attorney to represent the alleged  
10 parole violator to be paid for at state expense, and, in addition, the  
11 board may assume all or such other expenses in the presentation of  
12 evidence on behalf of the alleged parole violator as it may have  
13 authorized: PROVIDED, That funds are available for the payment of  
14 attorneys' fees and expenses. Attorneys for the representation of  
15 alleged parole violators in on-site hearings shall be appointed by the  
16 superior courts for the counties wherein the on-site parole revocation  
17 hearing is to be held and such attorneys shall be compensated in such  
18 manner and in such amount as shall be fixed in a schedule of fees  
19 adopted by rule of the board.

20       (2) The rights of offenders sentenced under section 303 of this act  
21 are defined in section 309 of this act.

22       **Sec. 336.** RCW 9.95.123 and 1999 c 143 s 24 are each amended to  
23 read as follows:

24       In conducting on-site parole or community custody revocation  
25 hearings or community custody violations hearings, the board shall have  
26 the authority to administer oaths and affirmations, examine witnesses,  
27 receive evidence, and issue subpoenas for the compulsory attendance of  
28 witnesses and the production of evidence for presentation at such  
29 hearings. Subpoenas issued by the board shall be effective throughout  
30 the state. Witnesses in attendance at any on-site parole or community  
31 custody revocation hearing shall be paid the same fees and allowances,  
32 in the same manner and under the same conditions as provided for  
33 witnesses in the courts of the state in accordance with chapter 2.40  
34 RCW (~~(as now or hereafter amended)~~). If any person fails or refuses to  
35 obey a subpoena issued by the board, or obeys the subpoena but refuses  
36 to testify concerning any matter under examination at the hearing, the  
37 board may petition the superior court of the county where the hearing  
38 is being conducted for enforcement of the subpoena: PROVIDED, That an

1 offer to pay statutory fees and mileage has been made to the witness at  
2 the time of the service of the subpoena. The petition shall be  
3 accompanied by a copy of the subpoena and proof of service, and shall  
4 set forth in what specific manner the subpoena has not been complied  
5 with, and shall ask an order of the court to compel the witness to  
6 appear and testify before the board. The court, upon such petition,  
7 shall enter an order directing the witness to appear before the court  
8 at a time and place to be fixed in such order and then and there to  
9 show cause why he or she has not responded to the subpoena or has  
10 refused to testify. A copy of the order shall be served upon the  
11 witness. If it appears to the court that the subpoena was properly  
12 issued and that the particular questions which the witness refuses to  
13 answer are reasonable and relevant, the court shall enter an order that  
14 the witness appear at the time and place fixed in the order and testify  
15 or produce the required papers, and on failing to obey (~~said~~) the  
16 order, the witness shall be dealt with as for contempt of court.

17 **Sec. 337.** RCW 9.95.124 and 1999 c 143 s 25 are each amended to  
18 read as follows:

19 At all on-site parole revocation hearings for offenders convicted  
20 of crimes committed before July 1, 1984, the (~~probation and parole~~)  
21 community corrections officers of the department of corrections, having  
22 made the allegations of the violations of the conditions of parole, may  
23 be represented by the attorney general. The attorney general may make  
24 independent recommendations to the board about whether the violations  
25 constitute sufficient cause for the revocation of the parole and the  
26 return of the parolee to a state correctional institution for convicted  
27 felons. The hearings shall be open to the public unless the board for  
28 specifically stated reasons closes the hearing in whole or in part.  
29 The hearings shall be recorded either manually or by a mechanical  
30 recording device. An alleged parole violator may be requested to  
31 testify and any such testimony shall not be used against him or her in  
32 any criminal prosecution. The board shall adopt rules governing the  
33 formal and informal procedures authorized by this chapter and make  
34 rules of practice before the board in on-site parole revocation  
35 hearings, together with forms and instructions.

36 **Sec. 338.** RCW 9.95.125 and 1993 c 140 s 2 are each amended to read  
37 as follows:



1       After the on-site parole revocation hearing for a person convicted  
2 of a crime committed before July 1, 1984, has been concluded, the  
3 members of the board having heard the matter shall enter their decision  
4 of record within ten days, and make findings and conclusions upon the  
5 allegations of the violations of the conditions of parole. If the  
6 member, or members having heard the matter, should conclude that the  
7 allegations of violation of the conditions of parole have not been  
8 proven by a preponderance of the evidence, or, those which have been  
9 proven by a preponderance of the evidence are not sufficient cause for  
10 the revocation of parole, then the parolee shall be reinstated on  
11 parole on the same or modified conditions of parole. For parole  
12 violations not resulting in new convictions, modified conditions of  
13 parole may include sanctions according to an administrative sanction  
14 grid. If the member or members having heard the matter should conclude  
15 that the allegations of violation of the conditions of parole have been  
16 proven by a preponderance of the evidence and constitute sufficient  
17 cause for the revocation of parole, then such member or members shall  
18 enter an order of parole revocation and return the parole violator to  
19 state custody. Within thirty days of the return of such parole  
20 violator to a state correctional institution (~~((for convicted felons))~~)  
21 the board shall enter an order determining a new minimum term not  
22 exceeding the maximum penalty provided by law for the crime for which  
23 the parole violator was originally convicted or the maximum fixed by  
24 the court.

25       **Sec. 339.** RCW 9.95.126 and 1969 c 98 s 8 are each amended to read  
26 as follows:

27       All officers and employees of the state, counties, cities and  
28 political subdivisions of this state shall cooperate with the board  
29 (~~((of prison terms and paroles))~~) in making available suitable facilities  
30 for conducting parole or community custody revocation hearings.

31       **Sec. 340.** RCW 9.95.130 and 1993 c 140 s 3 are each amended to read  
32 as follows:

33       From and after the suspension, cancellation, or revocation of the  
34 parole of any (~~((convicted person))~~) offender convicted of a crime  
35 committed before July 1, 1984, and until his or her return to custody  
36 the (~~((convicted person))~~) offender shall be deemed an escapee and a  
37 fugitive from justice. The indeterminate sentence review board may

1 deny credit against the maximum sentence any time during which he or  
2 she is an escapee and fugitive from justice.

3       **Sec. 341.** RCW 9.95.140 and 1992 c 7 s 27 are each amended to read  
4 as follows:

5       (1) The ((indeterminate sentence review)) board shall cause a  
6 complete record to be kept of every prisoner under the jurisdiction of  
7 the board released on parole or community custody. Such records shall  
8 be organized in accordance with the most modern methods of filing and  
9 indexing so that there will be always immediately available complete  
10 information about each such prisoner. Subject to information sharing  
11 provisions related to mentally ill offenders, the end of sentence  
12 review committee, and the department of corrections, the board may make  
13 rules as to the privacy of such records and their use by others than  
14 the board and its staff. ((In determining the rules regarding  
15 dissemination of information regarding convicted)) Sex offenders  
16 convicted of crimes committed before July 1, 1984, who are under the  
17 board's jurisdiction((-)) shall be subject to the determinations of the  
18 end of sentence review committee regarding risk level and subject to  
19 sex offender registration and community notification. The board  
20 ((shall consider the provisions of section 116, chapter 3, Laws of 1990  
21 and RCW 4.24.550 and)) shall be immune from liability for the release  
22 of information concerning sex offenders as provided in RCW 4.24.550.

23       The superintendents of state correctional facilities and all  
24 officers and employees thereof and all other public officials shall at  
25 all times cooperate with the board and furnish to the board, its  
26 officers, and employees such information as may be necessary to enable  
27 it to perform its functions, and such superintendents and other  
28 employees shall at all times give the members of the board, its  
29 officers, and employees free access to all prisoners confined in the  
30 state correctional facilities.

31       (2) Offenders sentenced under section 303 of this act shall be  
32 subject to the determinations of the end of sentence review committee  
33 regarding risk level and subject to sex offender registration and  
34 community notification.

35       (3) The end of sentence review committee shall make law enforcement  
36 notifications for offenders under board jurisdiction on the same basis  
37 that it notifies law enforcement regarding offenders sentenced under  
38 chapter 9.94A RCW for crimes committed after July 1, 1984.

1       **Sec. 342.** RCW 9.95.190 and 1992 c 7 s 28 are each amended to read  
2 as follows:

3       The provisions of RCW 9.95.010 through 9.95.170, inclusive, shall  
4 apply to all convicted persons serving time in a state correctional  
5 facility for crimes committed before July 1, 1984, to the end that at  
6 all times the same provisions relating to sentences, imprisonments, and  
7 paroles of prisoners shall apply to all inmates thereof.

8       **Sec. 343.** RCW 9.95.250 and 1981 c 136 s 43 are each amended to  
9 read as follows:

10       In order to carry out the provisions of this chapter 9.95 RCW the  
11 parole officers working under the supervision of the secretary of  
12 corrections shall be known as ((~~probation and parole~~)) community  
13 corrections officers.

14       **Sec. 344.** RCW 9.95.280 and 1999 c 143 s 31 are each amended to  
15 read as follows:

16       The board may deputize any person (regularly employed by another  
17 state) to act as an officer and agent of this state in effecting the  
18 return of any person convicted of a crime committed before July 1,  
19 1984, who has violated the terms and conditions of parole or probation  
20 as granted by this state. In any matter relating to the return of such  
21 a person, any agent so deputized shall have all the powers of a police  
22 officer of this state.

23       **Sec. 345.** RCW 9.95.290 and 1955 c 183 s 2 are each amended to read  
24 as follows:

25       Any deputization pursuant to this statute with regard to an  
26 offender convicted of a crime committed before July 1, 1984, shall be  
27 in writing and any person authorized to act as an agent of this state  
28 pursuant hereto shall carry formal evidence of his or her deputization  
29 and shall produce the same upon demand.

30       **Sec. 346.** RCW 9.95.300 and 1999 c 143 s 32 are each amended to  
31 read as follows:

32       The board may enter into contracts with similar officials of any  
33 other state or states for the purpose of sharing an equitable portion  
34 of the cost of effecting the return of any person who has violated the

1 terms and conditions of parole (~~(or)~~), probation, or community custody  
2 as granted by this state.

3 **Sec. 347.** RCW 9.95.310 and 1986 c 125 s 1 are each amended to read  
4 as follows:

5 The purpose of RCW 9.95.310 through 9.95.370 is to provide  
6 necessary assistance, other than assistance which is authorized to be  
7 provided under the vocational rehabilitation laws, Title 28A RCW, under  
8 the public assistance laws, Title 74 RCW or the (~~department of~~)  
9 employment security department or other state agency, for parolees,  
10 inmates assigned to work/training release facilities, discharged  
11 prisoners and persons convicted of a felony committed before July 1,  
12 1984, and granted probation in need and whose capacity to earn a living  
13 under these circumstances is impaired; and to help such persons attain  
14 self-care and/or self-support for rehabilitation and restoration to  
15 independence as useful citizens as rapidly as possible thereby reducing  
16 the number of returnees to the institutions of this state to the  
17 benefit of such person and society as a whole.

18 **Sec. 348.** RCW 9.95.320 and 1986 c 125 s 2 are each amended to read  
19 as follows:

20 The secretary of corrections or his or her designee may provide to  
21 any parolee, inmate assigned to a work/training release facility,  
22 discharged prisoner and persons convicted of a felony committed before  
23 July 1, 1984, and granted probation in need and without necessary  
24 means, from any funds legally available therefor, such reasonable sums  
25 as he or she deems necessary for the subsistence of such person and his  
26 or her family until such person has become gainfully employed. Such  
27 aid may be made under such terms and conditions, and through local  
28 parole or probation officers if necessary, as the secretary of  
29 corrections or his or her designee may require and shall be  
30 supplementary to any moneys which may be provided under public  
31 assistance or from any other source.

32 **Sec. 349.** RCW 9.95.340 and 1986 c 125 s 3 are each amended to read  
33 as follows:

34 Any funds in the hands of the department of corrections, or which  
35 may come into its hands, which belong to discharged prisoners, inmates  
36 assigned to work/training release facilities, parolees or persons

1 convicted of a felony and granted probation who absconded, or whose  
2 whereabouts are unknown, shall be deposited in the community services  
3 revolving fund. Said funds shall be used to defray the expenses of  
4 clothing and other necessities and for transporting discharged  
5 prisoners, inmates assigned to work/training release facilities,  
6 parolees and persons convicted of a felony and granted probation who  
7 are without means to secure the same. All payments disbursed from  
8 these funds shall be repaid, whenever possible, by discharged  
9 prisoners, inmates assigned to work/training release facilities,  
10 parolees and persons convicted of a felony and granted probation for  
11 whose benefit they are made. Whenever any money belonging to such  
12 persons is so paid into the revolving fund, it shall be repaid to them  
13 in accordance with law if a claim therefor is filed with the department  
14 of corrections within five years of deposit into said fund and upon a  
15 clear showing of a legal right of such claimant to such money. This  
16 section applies to persons convicted of a felony committed before July  
17 1, 1984.

18 **Sec. 350.** RCW 9.95.350 and 1986 c 125 s 4 are each amended to read  
19 as follows:

20 All money or other property paid or delivered to a ((~~probation or~~  
21 ~~parole~~)) community corrections officer or employee of the department of  
22 corrections by or for the benefit of any discharged prisoner, inmate  
23 assigned to a work/training release facility, parolee or persons  
24 convicted of a felony and granted probation shall be immediately  
25 transmitted to the department of corrections and it shall enter the  
26 same upon its books to his or her credit. Such money or other property  
27 shall be used only under the direction of the department of  
28 corrections.

29 If such person absconds, the money shall be deposited in the  
30 revolving fund created by RCW 9.95.360, and any other property, if not  
31 called for within one year, shall be sold by the department of  
32 corrections and the proceeds credited to the revolving fund.

33 If any person, files a claim within five years after the deposit or  
34 crediting of such funds, and satisfies the department of corrections  
35 that he or she is entitled thereto, the department may make a finding  
36 to that effect and may make payment to the claimant in the amount to  
37 which he or she is entitled.

1       This section applies to persons convicted of a felony committed  
2 before July 1, 1984.

3       **Sec. 351.** RCW 9.95.360 and 1986 c 125 s 5 are each amended to read  
4 as follows:

5       The department of corrections shall create, maintain, and  
6 administer outside the state treasury a permanent revolving fund to be  
7 known as the "community services revolving fund" into which shall be  
8 deposited all moneys received by it under RCW 9.95.310 through 9.95.370  
9 and any appropriation made for the purposes of RCW 9.95.310 through  
10 9.95.370. All expenditures from this revolving fund shall be made by  
11 check or voucher signed by the secretary of corrections or his or her  
12 designee. The community services revolving fund shall be deposited by  
13 the department of corrections in such banks or financial institutions  
14 as it may select which shall give to the department a surety bond  
15 executed by a surety company authorized to do business in this state,  
16 or collateral eligible as security for deposit of state funds in at  
17 least the full amount of deposit.

18       This section applies to persons convicted of a felony committed  
19 before July 1, 1984.

20       **Sec. 352.** RCW 9.95.370 and 1981 c 136 s 50 are each amended to  
21 read as follows:

22       The secretary of corrections or his or her designee shall enter  
23 into a written agreement with every person receiving funds under RCW  
24 9.95.310 through 9.95.370 that such person will repay such funds under  
25 the terms and conditions in said agreement. No person shall receive  
26 funds until such an agreement is validly made. This section applies to  
27 persons convicted of a felony committed before July 1, 1984.

28       **Sec. 353.** RCW 9.95.900 and 1981 c 137 s 32 are each amended to  
29 read as follows:

30       (1) Except as provided in subsection (2) of this section, the  
31 following sections of law do not apply to any felony offense committed  
32 on or after July 1, 1984: RCW ((9.95.003,—9.95.005,—9.95.007,—)  
33 9.95.010, 9.95.011, 9.95.013, 9.95.015, 9.95.017, ((9.95.020,—9.95.030,—  
34 9.95.031,—9.95.032,—)) 9.95.040, 9.95.045, 9.95.047, 9.95.052,  
35 ((9.95.070,—)) 9.95.080, ((9.95.090,—)) 9.95.100, ((9.95.110,—)) 9.95.115,  
36 9.95.116, 9.95.120, ((9.95.121,—9.95.122,—9.95.123,—)) 9.95.124,

1 9.95.125, (~~(9.95.126,)~~) 9.95.130, (~~(9.95.140, 9.95.150, 9.95.160,~~  
2 ~~9.95.170,)~~) 9.95.190, 9.95.200, 9.95.204, 9.95.206, 9.95.210, 9.95.212,  
3 9.95.214, 9.95.220, 9.95.230, 9.95.240, 9.95.250, 9.95.260, 9.95.265,  
4 9.95.280, 9.95.290, 9.95.310, 9.95.320, 9.95.330, 9.95.340, 9.95.350,  
5 (~~and~~) 9.95.360, 9.95.370, 72.04A.070, and 72.04A.080.

6 (2) The following sections apply to any felony offense committed  
7 before July 1, 1984, and to any offense sentenced under section 303 of  
8 this act and committed on or after July 1, 2001: RCW 9.95.003,  
9 9.95.005, 9.95.007, 9.95.020, 9.95.030, 9.95.031, 9.95.032, 9.95.055,  
10 9.95.060, 9.95.062, 9.95.063, 9.95.064, 9.95.070, 9.95.090, 9.95.110,  
11 9.95.121, 9.95.122, 9.95.123, 9.95.126, 9.95.140, 9.95.150, 9.95.160,  
12 9.95.170, 9.95.300, and 9.96.050.

13 **Sec. 354.** RCW 9A.28.020 and 1994 c 271 s 101 are each amended to  
14 read as follows:

15 (1) A person is guilty of an attempt to commit a crime if, with  
16 intent to commit a specific crime, he or she does any act which is a  
17 substantial step toward the commission of that crime.

18 (2) If the conduct in which a person engages otherwise constitutes  
19 an attempt to commit a crime, it is no defense to a prosecution of such  
20 attempt that the crime charged to have been attempted was, under the  
21 attendant circumstances, factually or legally impossible of commission.

22 (3) An attempt to commit a crime is a:

23 (a) Class A felony when the crime attempted is murder in the first  
24 degree, murder in the second degree, (~~or~~) arson in the first degree,  
25 child molestation in the first degree, indecent liberties by forcible  
26 compulsion, rape in the first degree, rape in the second degree, rape  
27 of a child in the first degree, or rape of a child in the second  
28 degree;

29 (b) Class B felony when the crime attempted is a class A felony  
30 other than (~~murder in the first degree, murder in the second degree,~~  
31 ~~or arson in the first degree~~) an offense listed in (a) of this  
32 subsection;

33 (c) Class C felony when the crime attempted is a class B felony;

34 (d) Gross misdemeanor when the crime attempted is a class C felony;

35 (e) Misdemeanor when the crime attempted is a gross misdemeanor or  
36 misdemeanor.

1       **Sec. 355.** RCW 9A.36.021 and 1997 c 196 s 2 are each amended to  
2 read as follows:

3       (1) A person is guilty of assault in the second degree if he or  
4 she, under circumstances not amounting to assault in the first degree:

5       (a) Intentionally assaults another and thereby recklessly inflicts  
6 substantial bodily harm; or

7       (b) Intentionally and unlawfully causes substantial bodily harm to  
8 an unborn quick child by intentionally and unlawfully inflicting any  
9 injury upon the mother of such child; or

10       (c) Assaults another with a deadly weapon; or

11       (d) With intent to inflict bodily harm, administers to or causes to  
12 be taken by another, poison or any other destructive or noxious  
13 substance; or

14       (e) With intent to commit a felony, assaults another; or

15       (f) Knowingly inflicts bodily harm which by design causes such pain  
16 or agony as to be the equivalent of that produced by torture.

17       (2) Assault in the second degree is a class B felony, except that  
18 assault in the second degree with a finding of sexual motivation under  
19 RCW 9.94A.127 or 13.40.135 is a class A felony.

20       **Sec. 356.** RCW 9A.40.030 and 1975 1st ex.s. c 260 s 9A.40.030 are  
21 each amended to read as follows:

22       (1) A person is guilty of kidnapping in the second degree if he or  
23 she intentionally abducts another person under circumstances not  
24 amounting to kidnapping in the first degree.

25       (2) In any prosecution for kidnapping in the second degree, it is  
26 a defense if established by the defendant by a preponderance of the  
27 evidence that (a) the abduction does not include the use of or intent  
28 to use or threat to use deadly force, and (b) the actor is a relative  
29 of the person abducted, and (c) the actor's sole intent is to assume  
30 custody of that person. Nothing contained in this paragraph shall  
31 constitute a defense to a prosecution for, or preclude a conviction of,  
32 any other crime.

33       (3) Kidnapping in the second degree is a class B felony, except  
34 that kidnapping in the second degree with a finding of sexual  
35 motivation under RCW 9.94A.127 or 13.40.135 is a class A felony.

36       **Sec. 357.** RCW 9A.44.093 and 1994 c 271 s 306 are each amended to  
37 read as follows:



(1) A person is guilty of sexual misconduct with a minor in the first degree when: (a) The person has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual intercourse with the victim; or (b) the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with a registered student of the school who is at least sixteen years old and not married to the employee, if the employee is at least sixty months older than the student.

(2) Sexual misconduct with a minor in the first degree is a class C felony.

(3) For the purposes of this section, "school employee" means an employee of a common school defined in RCW 28A.150.020, or a grade kindergarten through twelve employee of a private school under chapter 28A.195 RCW, who is not enrolled as a student of the common school or private school.

**Sec. 358.** RCW 9A.44.096 and 1994 c 271 s 307 are each amended to read as follows:

(1) A person is guilty of sexual misconduct with a minor in the second degree when: (a) The person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual contact with the victim; or (b) the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual contact with a registered student of the school who is at least sixteen years old and not married to the employee, if the employee is at least sixty months older than the student.

1 (2) Sexual misconduct with a minor in the second degree is a gross  
2 misdemeanor.

3 (3) For the purposes of this section, "school employee" means an  
4 employee of a common school defined in RCW 28A.150.020, or a grade  
5 kindergarten through twelve employee of a private school under chapter  
6 28A.195 RCW, who is not enrolled as a student of the common school or  
7 private school.

8 **Sec. 359.** RCW 9A.44.100 and 1997 c 392 s 515 are each amended to  
9 read as follows:

10 (1) A person is guilty of indecent liberties when he or she  
11 knowingly causes another person who is not his or her spouse to have  
12 sexual contact with him or her or another:

13 (a) By forcible compulsion;

14 (b) When the other person is incapable of consent by reason of  
15 being mentally defective, mentally incapacitated, or physically  
16 helpless;

17 (c) When the victim is developmentally disabled and the perpetrator  
18 is a person who is not married to the victim and who has supervisory  
19 authority over the victim;

20 (d) When the perpetrator is a health care provider, the victim is  
21 a client or patient, and the sexual contact occurs during a treatment  
22 session, consultation, interview, or examination. It is an affirmative  
23 defense that the defendant must prove by a preponderance of the  
24 evidence that the client or patient consented to the sexual contact  
25 with the knowledge that the sexual contact was not for the purpose of  
26 treatment;

27 (e) When the victim is a resident of a facility for mentally  
28 disordered or chemically dependent persons and the perpetrator is a  
29 person who is not married to the victim and has supervisory authority  
30 over the victim; or

31 (f) When the victim is a frail elder or vulnerable adult and the  
32 perpetrator is a person who is not married to the victim and who has a  
33 significant relationship with the victim.

34 (2) Indecent liberties is a class B felony, except that indecent  
35 liberties by forcible compulsion is a class A felony.

36 **Sec. 360.** RCW 9A.76.--- and 2001 c 287 s 1 are each amended to  
37 read as follows:

(1) A person is guilty of ~~((escape by a))~~ sexually violent predator escape if ~~((, having been committed to the department of social and health services as a sexually violent predator under chapter 71.09 RCW, he or she:~~

~~(a) Escapes from custody;~~

~~(b) Escapes from a commitment facility;~~

~~(c) Escapes from a less restrictive alternative facility; or~~

~~(d) While on conditional release and residing in a location other than at a commitment center or less restrictive alternative facility, leaves or remains absent from the state of Washington without prior court authorization)):~~

(a) Having been found to be a sexually violent predator and confined to the special commitment center or another secure facility under court order, the person escapes from the secure facility;

(b) Having been found to be a sexually violent predator and being under an order of conditional release, the person leaves or remains absent from the state of Washington without prior court authorization; or

(c) Having been found to be a sexually violent predator and being under an order of conditional release, the person: (i) Without authorization, leaves or remains absent from his or her residence, place of employment, educational institution, or authorized outing; (ii) tampers with his or her electronic monitoring device or removes it without authorization; or (iii) escapes from his or her escort.

(2) ((Escape by a)) Sexually violent predator escape is a class ((B)) A felony with a minimum sentence of sixty months, and shall be sentenced under section 303 of this act.

**Sec. 361.** RCW 9.94A.320 and 2001 c 310 s 4, 2001 c 287 s 3, 2001 c 224 s 3, 2001 c 222 s 24, and 2001 c 207 s 3 are each reenacted and amended to read as follows:

## TABLE 2

### CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XVI Aggravated Murder 1 (RCW 10.95.020)

XV Homicide by abuse (RCW 9A.32.055)

Malicious explosion 1 (RCW 70.74.280(1))

Murder 1 (RCW 9A.32.030)

1     XIV           Murder 2 (RCW 9A.32.050)  
 2     XIII          Malicious explosion 2 (RCW 70.74.280(2))  
 3                   Malicious placement of an explosive 1 (RCW  
 4                   70.74.270(1))  
 5     XII           Assault 1 (RCW 9A.36.011)  
 6                   Assault of a Child 1 (RCW 9A.36.120)  
 7                   Malicious placement of an imitation device  
 8                   1 (RCW 70.74.272(1)(a))  
 9                   Rape 1 (RCW 9A.44.040)  
 10                  Rape of a Child 1 (RCW 9A.44.073)  
 11     XI           Manslaughter 1 (RCW 9A.32.060)  
 12                  Rape 2 (RCW 9A.44.050)  
 13                  Rape of a Child 2 (RCW 9A.44.076)  
 14     X            Child Molestation 1 (RCW 9A.44.083)  
 15                   ((~~Escape by a~~) Sexually Violent Predator  
 16                   Escape (RCW 9A.76.--- (section 1,  
 17                   chapter 287, Laws of 2001, as amended  
 18                   by section 360, chapter ... (this  
 19                   act), Laws of 2001 2nd sp. sess.))  
 20                   Indecent Liberties (with forcible  
 21                   compulsion) (RCW 9A.44.100(1)(a))  
 22                   Kidnapping 1 (RCW 9A.40.020)  
 23                   Leading Organized Crime (RCW  
 24                   9A.82.060(1)(a))  
 25                   Malicious explosion 3 (RCW 70.74.280(3))  
 26                   Manufacture of methamphetamine (RCW  
 27                   69.50.401(a)(1)(ii))  
 28                   Over 18 and deliver heroin,  
 29                   methamphetamine, a narcotic from  
 30                   Schedule I or II, or flunitrazepam  
 31                   from Schedule IV to someone under 18  
 32                   (RCW 69.50.406)  
 33     IX            Assault of a Child 2 (RCW 9A.36.130)  
 34                   Controlled Substance Homicide (RCW  
 35                   69.50.415)  
 36                   Explosive devices prohibited (RCW  
 37                   70.74.180)

1 Homicide by Watercraft, by being under the  
 2 influence of intoxicating liquor or  
 3 any drug (RCW 79A.60.050)  
 4 Inciting Criminal Profiteering (RCW  
 5 9A.82.060(1)(b))  
 6 Malicious placement of an explosive 2 (RCW  
 7 70.74.270(2))  
 8 Over 18 and deliver narcotic from Schedule  
 9 III, IV, or V or a nonnarcotic, except  
 10 flunitrazepam or methamphetamine, from  
 11 Schedule I-V to someone under 18 and 3  
 12 years junior (RCW 69.50.406)  
 13 Robbery 1 (RCW 9A.56.200)  
 14 Sexual Exploitation (RCW 9.68A.040)  
 15 Vehicular Homicide, by being under the  
 16 influence of intoxicating liquor or  
 17 any drug (RCW 46.61.520)  
 18 VIII Arson 1 (RCW 9A.48.020)  
 19 Deliver or possess with intent to deliver  
 20 m e t h a m p h e t a m i n e ( R C W  
 21 69.50.401(a)(1)(ii))  
 22 Hit and Run--Death (RCW 46.52.020(4)(a))  
 23 Homicide by Watercraft, by the operation of  
 24 any vessel in a reckless manner (RCW  
 25 79A.60.050)  
 26 Manslaughter 2 (RCW 9A.32.070)  
 27 Manufacture, deliver, or possess with  
 28 intent to deliver amphetamine (RCW  
 29 69.50.401(a)(1)(ii))  
 30 Manufacture, deliver, or possess with  
 31 intent to deliver heroin or cocaine  
 32 (RCW 69.50.401(a)(1)(i))  
 33 Possession of Ephedrine, Pseudoephedrine,  
 34 or Anhydrous Ammonia with intent to  
 35 manufacture methamphetamine (RCW  
 36 69.50.440)  
 37 Promoting Prostitution 1 (RCW 9A.88.070)

1           Selling for profit (controlled or  
 2           counterfeit) any controlled substance  
 3           (RCW 69.50.410)  
 4           Theft of Anhydrous Ammonia (RCW 69.55.010)  
 5           Vehicular Homicide, by the operation of any  
 6           vehicle in a reckless manner (RCW  
 7           46.61.520)  
 8       VII       Burglary 1 (RCW 9A.52.020)  
 9           Child Molestation 2 (RCW 9A.44.086)  
 10           Dealing in depictions of minor engaged in  
 11           sexually explicit conduct (RCW  
 12           9.68A.050)  
 13           Drive-by Shooting (RCW 9A.36.045)  
 14           Homicide by Watercraft, by disregard for  
 15           the safety of others (RCW 79A.60.050)  
 16           Indecent Liberties (without forcible  
 17           compulsion) (RCW 9A.44.100(1) (b) and  
 18           (c))  
 19           Introducing Contraband 1 (RCW 9A.76.140)  
 20           Involving a minor in drug dealing (RCW  
 21           69.50.401(f))  
 22           Malicious placement of an explosive 3 (RCW  
 23           70.74.270(3))  
 24           Sending, bringing into state depictions of  
 25           minor engaged in sexually explicit  
 26           conduct (RCW 9.68A.060)  
 27           Unlawful Possession of a Firearm in the  
 28           first degree (RCW 9.41.040(1)(a))  
 29           Use of a Machine Gun in Commission of a  
 30           Felony (RCW 9.41.225)  
 31           Vehicular Homicide, by disregard for the  
 32           safety of others (RCW 46.61.520)  
 33       VI       Bail Jumping with Murder 1 (RCW  
 34           9A.76.170(~~((+2))~~) (3)(a))  
 35           Bribery (RCW 9A.68.010)  
 36           Incest 1 (RCW 9A.64.020(1))  
 37           Intimidating a Judge (RCW 9A.72.160)

1 Intimidating a Juror/Witness (RCW  
2 9A.72.110, 9A.72.130)  
3 Malicious placement of an imitation device  
4 2 (RCW 70.74.272(1)(b))  
5 Manufacture, deliver, or possess with  
6 intent to deliver narcotics from  
7 Schedule I or II (except heroin or  
8 cocaine) or flunitrazepam from  
9 Schedule IV (RCW 69.50.401(a)(1)(i))  
10 Rape of a Child 3 (RCW 9A.44.079)  
11 Theft of a Firearm (RCW 9A.56.300)  
12 Unlawful Storage of Anhydrous Ammonia (RCW  
13 69.55.020)  
14 V Abandonment of dependent person 1 (RCW  
15 9A.42.060)  
16 Advancing money or property for  
17 extortionate extension of credit (RCW  
18 9A.82.030)  
19 Bail Jumping with class A Felony (RCW  
20 9A.76.170(~~((2))~~) (3)(b))  
21 Child Molestation 3 (RCW 9A.44.089)  
22 Criminal Mistreatment 1 (RCW 9A.42.020)  
23 Custodial Sexual Misconduct 1 (RCW  
24 9A.44.160)  
25 Delivery of imitation controlled substance  
26 by person eighteen or over to person  
27 under eighteen (RCW 69.52.030(2))  
28 Domestic Violence Court Order Violation  
29 (RCW 10.99.040, 10.99.050, 26.09.300,  
30 26.10.220, 26.26.138, 26.50.110,  
31 26.52.070, or 74.34.145)  
32 Extortion 1 (RCW 9A.56.120)  
33 Extortionate Extension of Credit (RCW  
34 9A.82.020)  
35 Extortionate Means to Collect Extensions of  
36 Credit (RCW 9A.82.040)  
37 Incest 2 (RCW 9A.64.020(2))  
38 Kidnapping 2 (RCW 9A.40.030)  
39 Perjury 1 (RCW 9A.72.020)

1 Persistent prison misbehavior (RCW  
 2 9.94.070)  
 3 Possession of a Stolen Firearm (RCW  
 4 9A.56.310)  
 5 Rape 3 (RCW 9A.44.060)  
 6 Rendering Criminal Assistance 1 (RCW  
 7 9A.76.070)  
 8 Sexual Misconduct with a Minor 1 (RCW  
 9 9A.44.093)  
 10 Sexually Violating Human Remains (RCW  
 11 9A.44.105)  
 12 Stalking (RCW 9A.46.110)  
 13 IV Arson 2 (RCW 9A.48.030)  
 14 Assault 2 (RCW 9A.36.021)  
 15 Assault by Watercraft (RCW 79A.60.060)  
 16 Bribing a Witness/Bribe Received by Witness  
 17 (RCW 9A.72.090, 9A.72.100)  
 18 Commercial Bribery (RCW 9A.68.060)  
 19 Counterfeiting (RCW 9.16.035(4))  
 20 Escape 1 (RCW 9A.76.110)  
 21 Hit and Run--Injury (RCW 46.52.020(4)(b))  
 22 Hit and Run with Vessel--Injury Accident  
 23 (RCW 79A.60.200(3))  
 24 Indecent Exposure to Person Under Age  
 25 Fourteen (subsequent sex offense) (RCW  
 26 9A.88.010)  
 27 Influencing Outcome of Sporting Event (RCW  
 28 9A.82.070)  
 29 Knowingly Trafficking in Stolen Property  
 30 (RCW 9A.82.050(2))  
 31 Malicious Harassment (RCW 9A.36.080)  
 32 Manufacture, deliver, or possess with  
 33 intent to deliver narcotics from  
 34 Schedule III, IV, or V or nonnarcotics  
 35 from Schedule I-V (except marijuana,  
 36 amphetamine, methamphetamines, or  
 37 flunitrazepam) (RCW 69.50.401(a)(1)  
 38 (iii) through (v))  
 39 Residential Burglary (RCW 9A.52.025)



1 Robbery 2 (RCW 9A.56.210)  
2 Theft of Livestock 1 (RCW 9A.56.080)  
3 Threats to Bomb (RCW 9.61.160)  
4 Use of Proceeds of Criminal Profiteering  
5 (RCW 9A.82.080 (1) and (2))  
6 Vehicular Assault (RCW 46.61.522)  
7 Willful Failure to Return from Furlough  
8 (RCW 72.66.060)  
  
9 III Abandonment of dependent person 2 (RCW  
10 9A.42.070)  
11 Assault 3 (RCW 9A.36.031)  
12 Assault of a Child 3 (RCW 9A.36.140)  
13 Bail Jumping with class B or C Felony (RCW  
14 9A.76.170(~~((+2))~~) (3)(c))  
15 Burglary 2 (RCW 9A.52.030)  
16 Communication with a Minor for Immoral  
17 Purposes (RCW 9.68A.090)  
18 Criminal Gang Intimidation (RCW 9A.46.120)  
19 Criminal Mistreatment 2 (RCW 9A.42.030)  
20 Custodial Assault (RCW 9A.36.100)  
21 Delivery of a material in lieu of a  
22 controlled substance (RCW  
23 69.50.401(c))  
24 Escape 2 (RCW 9A.76.120)  
25 Extortion 2 (RCW 9A.56.130)  
26 Harassment (RCW 9A.46.020)  
27 Intimidating a Public Servant (RCW  
28 9A.76.180)  
29 Introducing Contraband 2 (RCW 9A.76.150)  
30 Maintaining a Dwelling or Place for  
31 Controlled Substances (RCW  
32 69.50.402(a)(6))  
33 Malicious Injury to Railroad Property (RCW  
34 81.60.070)  
35 Manufacture, deliver, or possess with  
36 intent to deliver marijuana (RCW  
37 69.50.401(a)(1)(iii))  
38 Manufacture, distribute, or possess with  
39 intent to distribute an imitation

1                   controlled       substance       (RCW  
 2                   69.52.030(1))  
 3       Patronizing a Juvenile Prostitute (RCW  
 4                   9.68A.100)  
 5       Perjury 2 (RCW 9A.72.030)  
 6       Possession of Incendiary Device (RCW  
 7                   9.40.120)  
 8       Possession of Machine Gun or Short-Barreled  
 9                   Shotgun or Rifle (RCW 9.41.190)  
 10       Promoting Prostitution 2 (RCW 9A.88.080)  
 11       Recklessly Trafficking in Stolen Property  
 12                   (RCW 9A.82.050(1))  
 13       Securities Act violation (RCW 21.20.400)  
 14       Tampering with a Witness (RCW 9A.72.120)  
 15       Telephone Harassment (subsequent conviction  
 16                   or threat of death) (RCW 9.61.230)  
 17       Theft of Livestock 2 (RCW 9A.56.080)  
 18       Unlawful Imprisonment (RCW 9A.40.040)  
 19       Unlawful possession of firearm in the  
 20                   second degree (RCW 9.41.040(1)(b))  
 21       Unlawful Use of Building for Drug Purposes  
 22                   (RCW 69.53.010)  
 23       Willful Failure to Return from Work Release  
 24                   (RCW 72.65.070)  
  
 25       II       Computer Trespass 1 (RCW 9A.52.110)  
 26               Counterfeiting (RCW 9.16.035(3))  
 27               Create, deliver, or possess a counterfeit  
 28                   controlled       substance       (RCW  
 29                   69.50.401(b))  
 30       Escape from Community Custody (RCW  
 31                   72.09.310)  
 32       Health Care False Claims (RCW 48.80.030)  
 33       Malicious Mischief 1 (RCW 9A.48.070)  
 34       Possession of controlled substance that is  
 35                   either heroin or narcotics from  
 36                   Schedule I or II or flunitrazepam from  
 37                   Schedule IV (RCW 69.50.401(d))  
 38       Possession of phencyclidine (PCP) (RCW  
 39                   69.50.401(d))

1 Possession of Stolen Property 1 (RCW  
2 9A.56.150)  
3 Theft 1 (RCW 9A.56.030)  
4 Theft of Rental, Leased, or Lease-purchased  
5 Property (valued at one thousand five  
6 hundred dollars or more) (RCW  
7 9A.56.096(4))  
8 Trafficking in Insurance Claims (RCW  
9 48.30A.015)  
10 Unlawful Practice of Law (RCW 2.48.180)  
11 Unlicensed Practice of a Profession or  
12 Business (RCW 18.130.190(7))  
  
13 I Attempting to Elude a Pursuing Police  
14 Vehicle (RCW 46.61.024)  
15 False Verification for Welfare (RCW  
16 74.08.055)  
17 Forged Prescription (RCW 69.41.020)  
18 Forged Prescription for a Controlled  
19 Substance (RCW 69.50.403)  
20 Forgery (RCW 9A.60.020)  
21 Malicious Mischief 2 (RCW 9A.48.080)  
22 Possess Controlled Substance that is a  
23 Narcotic from Schedule III, IV, or V  
24 or Non-narcotic from Schedule I-V  
25 (except phencyclidine or  
26 flunitrazepam) (RCW 69.50.401(d))  
27 Possession of Stolen Property 2 (RCW  
28 9A.56.160)  
29 Reckless Burning 1 (RCW 9A.48.040)  
30 Taking Motor Vehicle Without Permission  
31 (RCW 9A.56.070)  
32 Theft 2 (RCW 9A.56.040)  
33 Theft of Rental, Leased, or Lease-purchased  
34 Property (valued at two hundred fifty  
35 dollars or more but less than one  
36 thousand five hundred dollars) (RCW  
37 9A.56.096(4))  
38 Unlawful Issuance of Checks or Drafts (RCW  
39 9A.56.060)

Unlawful Use of Food Stamps (RCW 9.91.140  
(2) and (3))  
Vehicle Prowl 1 (RCW 9A.52.095)

**Sec. 362.** RCW 72.09.370 and 1999 c 214 s 2 are each amended to read as follows:

(1) The secretary shall identify offenders in confinement or partial confinement who: (a) Are reasonably believed to be dangerous to themselves or others; and (b) have a mental disorder. In determining an offender's dangerousness, the secretary shall consider behavior known to the department and factors, based on research, that are linked to an increased risk for dangerousness of mentally ill offenders and shall include consideration of an offender's chemical dependency or abuse.

(2) Prior to release of an offender identified under this section, a team consisting of representatives of the department of corrections, the division of mental health, and, as necessary, the indeterminate sentence review board, other divisions or administrations within the department of social and health services, specifically including the division of alcohol and substance abuse and the division of developmental disabilities, the appropriate regional support network, and the providers, as appropriate, shall develop a plan, as determined necessary by the team, for delivery of treatment and support services to the offender upon release. The team may include a school district representative for offenders under the age of twenty-one. The team shall consult with the offender's counsel, if any, and, as appropriate, the offender's family and community. The team shall notify the crime victim/witness program, which shall provide notice to all people registered to receive notice under RCW 9.94A.155 of the proposed release plan developed by the team. Victims, witnesses, and other interested people notified by the department may provide information and comments to the department on potential safety risk to specific individuals or classes of individuals posed by the specific offender. The team may recommend: (a) That the offender be evaluated by the county designated mental health professional, as defined in chapter 71.05 RCW; (b) department-supervised community treatment; or (c) voluntary community mental health or chemical dependency or abuse treatment.

1 (3) Prior to release of an offender identified under this section,  
2 the team shall determine whether or not an evaluation by a county  
3 designated mental health professional is needed. If an evaluation is  
4 recommended, the supporting documentation shall be immediately  
5 forwarded to the appropriate county designated mental health  
6 professional. The supporting documentation shall include the  
7 offender's criminal history, history of judicially required or  
8 administratively ordered involuntary antipsychotic medication while in  
9 confinement, and any known history of involuntary civil commitment.

10 (4) If an evaluation by a county designated mental health  
11 professional is recommended by the team, such evaluation shall occur  
12 not more than ten days, nor less than five days, prior to release.

13 (5) A second evaluation by a county designated mental health  
14 professional shall occur on the day of release if requested by the  
15 team, based upon new information or a change in the offender's mental  
16 condition, and the initial evaluation did not result in an emergency  
17 detention or a summons under chapter 71.05 RCW.

18 (6) If the county designated mental health professional determines  
19 an emergency detention under chapter 71.05 RCW is necessary, the  
20 department shall release the offender only to a state hospital or to a  
21 consenting evaluation and treatment facility. The department shall  
22 arrange transportation of the offender to the hospital or facility.

23 (7) If the county designated mental health professional believes  
24 that a less restrictive alternative treatment is appropriate, he or she  
25 shall seek a summons, pursuant to the provisions of chapter 71.05 RCW,  
26 to require the offender to appear at an evaluation and treatment  
27 facility. If a summons is issued, the offender shall remain within the  
28 corrections facility until completion of his or her term of confinement  
29 and be transported, by corrections personnel on the day of completion,  
30 directly to the identified evaluation and treatment facility.

31 (8) The secretary shall adopt rules to implement this section.

32 NEW SECTION. Sec. 363. A new section is added to chapter 9.95 RCW  
33 to read as follows:

34 The indeterminate sentence review board, in fulfilling its duties  
35 under the provisions of this act, shall be considered a parole board as  
36 that concept was treated in law under the state's indeterminate  
37 sentencing statutes.



1       (b) Convicted in any other jurisdiction of an offense that under  
2 the laws of this state would be classified as a sex offense as defined  
3 in RCW 9.94A.030; or

4       (c) Suspended or otherwise restricted from practicing any health  
5 care profession by competent authority in any state, federal, or  
6 foreign jurisdiction.

7       **NEW SECTION. Sec. 403.** A new section is added to chapter 4.24 RCW  
8 to read as follows:

9       (1) A certified sex offender treatment provider, acting in the  
10 course of his or her duties, providing treatment to a person who has  
11 been released to a less restrictive alternative under chapter 71.09 RCW  
12 or to a level III sex offender on community custody as a court or  
13 department ordered condition of sentence is not negligent because he or  
14 she treats a high risk offender; sex offenders are known to have a risk  
15 of reoffense. The treatment provider is not liable for civil damages  
16 resulting from the reoffense of a client unless the treatment  
17 provider's acts or omissions constituted gross negligence or willful or  
18 wanton misconduct. This limited liability provision does not eliminate  
19 the treatment provider's duty to warn of and protect from a client's  
20 threatened violent behavior if the client communicates a serious threat  
21 of physical violence against a reasonably ascertainable victim or  
22 victims. This limited liability provision applies only to the conduct  
23 of certified sex offender treatment providers and not the conduct of  
24 the state.

25       (2) Sex offender treatment providers who provide services to the  
26 department of corrections by identifying risk factors and notifying the  
27 department of risks for the subset of high risk offenders who are not  
28 amenable to treatment and who are under court order for treatment or  
29 supervision are practicing within the scope of their profession.

30       **NEW SECTION. Sec. 404.** A new section is added to chapter 71.09  
31 RCW to read as follows:

32       (1) Examinations and treatment of sexually violent predators who  
33 are conditionally released to a less restrictive alternative under this  
34 chapter shall be conducted only by sex offender treatment providers  
35 certified by the department of health under chapter 18.155 RCW unless  
36 the court or the department of social and health services finds that:  
37 (a) The court-ordered less restrictive alternative placement is located

1 in another state; (b) the treatment provider is employed by the  
2 department; or (c)(i) all certified treatment providers become  
3 unavailable to provide treatment within a reasonable geographic  
4 distance of the person's home, as determined in rules adopted by the  
5 department of social and health services; and (ii) the evaluation and  
6 treatment plan comply with the rules adopted by the department of  
7 social and health services.

8 A treatment provider approved by the department of social and  
9 health services under (c) of this subsection, who is not certified by  
10 the department of health, shall consult with a certified provider  
11 during the person's period of treatment to ensure compliance with the  
12 rules adopted by the department of health. The frequency and content  
13 of the consultation shall be based on the recommendation of the  
14 certified provider.

15 (2) A treatment provider, whether or not he or she is employed or  
16 approved by the department of social and health services under  
17 subsection (1) of this section or otherwise certified, may not perform  
18 or provide treatment of sexually violent predators under this section  
19 if the treatment provider has been:

20 (a) Convicted of a sex offense, as defined in RCW 9.94A.030;

21 (b) Convicted in any other jurisdiction of an offense that under  
22 the laws of this state would be classified as a sex offense as defined  
23 in RCW 9.94A.030; or

24 (c) Suspended or otherwise restricted from practicing any health  
25 care profession by competent authority in any state, federal, or  
26 foreign jurisdiction.

27 (3) Nothing in this section prohibits a qualified expert from  
28 examining or evaluating a sexually violent predator who has been  
29 conditionally released for purposes of presenting an opinion in court  
30 proceedings.

## 31 PART V

### 32 TECHNICAL PROVISIONS

33 NEW SECTION. **Sec. 501.** The following acts or parts of acts are  
34 each repealed:

35 (1) RCW 9.95.0011 (Indeterminate sentence review board--Report--  
36 Recommendation of governor) and 1997 c 350 s 1, 1989 c 259 s 4, & 1986  
37 c 224 s 12; and



1 (2) RCW 9.95.145 (Sex offenders--Release of information--  
2 Classification of offenders) and 1997 c 364 s 5 & 1990 c 3 s 127.

3 NEW SECTION. **Sec. 502.** The secretary of corrections, the  
4 secretary of social and health services, and the indeterminate sentence  
5 review board may adopt rules to implement this act.

6 NEW SECTION. **Sec. 503.** (1) Sections 301 through 363 of this act  
7 shall not affect the validity of any sentence imposed under any other  
8 law for any offense committed before, on, or after the effective date  
9 of this section.

10 (2) Sections 301 through 363 of this act shall apply to offenses  
11 committed on or after the effective date of this section.

12 NEW SECTION. **Sec. 504.** If any provision of this act or its  
13 application to any person or circumstance is held invalid, the  
14 remainder of the act or the application of the provision to other  
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 505.** This act is necessary for the immediate  
17 preservation of the public peace, health, or safety, or support of the  
18 state government and its existing public institutions, and takes effect  
19 July 1, 2001, except for sections 101 through 226 of this act which  
20 take effect immediately."

21 **2ESSB 6151** - S AMD 460

22 By Senators Long, Costa, Snyder and Carlson

23

24 On page 1, line 1 of the title, after "Relating to" strike the  
25 remainder of the title and insert "the management of sex offenders in  
26 the civil commitment and criminal justice systems; amending RCW  
27 71.09.020, 36.70A.103, 36.70A.200, 9.94A.715, 9.94A.060, 9.94A.120,  
28 9.94A.190, 9.94A.390, 9.94A.590, 9.94A.670, 9.95.005, 9.95.010,  
29 9.95.011, 9.95.017, 9.95.020, 9.95.032, 9.95.052, 9.95.055, 9.95.064,  
30 9.95.070, 9.95.080, 9.95.090, 9.95.100, 9.95.110, 9.95.115, 9.95.120,  
31 9.95.121, 9.95.122, 9.95.123, 9.95.124, 9.95.125, 9.95.126, 9.95.130,  
32 9.95.140, 9.95.190, 9.95.250, 9.95.280, 9.95.290, 9.95.300, 9.95.310,  
33 9.95.320, 9.95.340, 9.95.350, 9.95.360, 9.95.370, 9.95.900, 9A.28.020,

1 9A.36.021, 9A.40.030, 9A.44.093, 9A.44.096, 9A.44.100, 9A.76.---, and  
2 72.09.370; reenacting and amending RCW 9.94A.030, 9.94A.320,  
3 18.155.020, and 18.155.030; adding new sections to chapter 71.09 RCW;  
4 adding new sections to chapter 72.09 RCW; adding new sections to  
5 chapter 9.94A RCW; adding new sections to chapter 9.95 RCW; adding a  
6 new section to chapter 4.24 RCW; creating new sections; repealing RCW  
7 9.95.0011 and 9.95.145; prescribing penalties; providing an effective  
8 date; providing expirations dates; and declaring an emergency."

EFFECT: This striking amendment makes the following changes from 2ESSB 6151 as it left the Senate:

(1) The secure community transition facility (SCTF) at McNeil Island is limited to 15 transitional and 9 long term beds.

(2) With the exception of the SCTF at McNeil Island, no county may be required to provide more SCTF beds than the number of persons committed from or with pending commitment petitions from that county on specified dates. The initial dates are April 1, 2001 and July 1, 2008.

(3) By August 31, 2001, DSHS must notify counties of the maximum number of beds that could be sited in the county and the projected minimum and maximum number of beds needed for the period of May 2004 through May 2007. Upon notification by the department, counties must promptly notify the cities within the county.

(4)(a) To encourage rapid siting of other facilities, counties and cities who commit to initiate the siting process for one or more SCTFs by February 1, 2002, shall receive a planning grant from DCTED.

(b) Any county or city that has issued all the necessary permits for an approved site by May 1, 2003, shall receive an incentive grant of \$50,000 for each bed sited.

(c) Any county or city that sites and permits SCTFs prior to January 1, 2003, shall receive an incentive bonus of 20% of the incentive grant in (b).

(d) Any county or city that sites and permits SCTFs with beds in excess of the maximum that the county could be required to site shall receive a bonus of \$100,000 per bed.

Pierce County would be eligible for this bonus for 3 beds at the facility on McNeil Island. Despite the prohibition on requiring siting in addition to this facility, Pierce County and any city within Pierce County are eligible for the incentive program should they decide to site additional facilities.

To participate in the incentive program, counties and cities must give great weight to the equitable distribution of SCTFs, development regulations, comprehensive plans and other laws must be consistent with the criteria in statute and rule, facilities must have at least 3 beds, and sites must be approved by the department.

(5) The essential public facilities planning provisions for SCTFs are extended to non-GMA counties. No county may preclude siting of SCTFs.

(6) The subsection that defines which minors are sentenced under the indeterminate sentencing provisions is simplified to no longer require a special finding.

(7) Modifies definition of sexual misconduct with a minor offense.

(8) The substance of SB 5465, relating to sex offender treatment providers are included in new Part IV. (These provisions have

unanimously passed the Senate twice and similar provisions were included in the House version of this bill.)

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